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FIRST THINGS

THE SUPREME COURT 1997
A Symposium

LIBERTY, EQUALITY, FRATERNITY
Jean-Marie Cardinal Lustiger

WE HOLD THESE TRUTHS
A Statement

MELVILLE IN MANHATTAN
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Breast Cancer and Abortion

I'd be the last one to defend the ideological bias of the *New England Journal of Medicine* (Joel Brind, "Abortion, Breast Cancer, and Ideology," May), but if breast cancer was increased by induced abortion, then one would expect to see it epidemic in places like Russia, where the average woman has nine abortions, and Japan, which legalized abortion in 1948. I don't know the breast cancer rate in Russia, but breast cancer is quite rare in Japan, a fact usually attributed to prolonged breast feeding and/or the low-fat diet of the average Japanese.

Hormone changes due to induced abortion may indeed be related to breast cancer, but there are other known causes of hormone changes that we should worry about, including the widespread use of chemical contraceptives, fertility drugs that cause hormone surges, increased obesity and fat content in the diet that change the body's estrogen metabolism, and last but not least, chemical contaminants in the environment that mimic estrogen. . . .

Ironically, nulliparity, i.e., having no children, is associated with an increased rate of breast cancer, even in nuns, who presumably do not have abortions.

Nancy K. O'Connor, M.D.
Red Lake, MN

Joel Brind replies:

Dr. O'Connor has raised several important questions in regard to abortion and breast cancer in other countries. In Russia, where abortion was legalized in 1955, the age-standardized breast cancer rate tripled between 1960 and 1987, rising from nine to twenty-seven cases per 100,000 women per year. The only completed study of which I am aware that compared Russian women with and without induced abortions was published (in Russian) in 1978. It showed an 89 percent risk increase (odds ratio = 1.89), although statistical confidence intervals were not given.

In Japan, the breast cancer rate is much lower than in the West, but so is the abortion rate, even in the absence of oral contraceptives. Between 1957 and 1985, four studies were published that compared Japanese women with and without a history of induced abortion, and all showed between 50 percent and 150 percent increased risk. Two of them also examined the effect of multiple abortions, and both of these found the risk of breast cancer to increase with the number of induced abortions.

Yes, there are many dietary and environmental factors that affect breast cancer risk, most of which are presumed to act via increasing or decreasing the levels of estrogens or estrogen-like substances to which women are chronically exposed. What is unique about abortion is that a single exposure measurably increases breast cancer risk, presumably because maternal estradiol (estrogen) reaches such high levels during a normal pregnancy. By the end of the first trimester, estradiol levels are elevated twenty-fold over the level present at conception; sevenfold higher than the peak level present just before ovulation, which is as high as it ever gets in the nonpregnant state. In contrast, in most spontaneous abortions, maternal estradiol levels never even reach the preovulatory peak level. Not surprisingly, therefore, spontaneous abortions are not generally associated with increased breast cancer risk.

Finally, it is true that having no children also increases the risk of breast cancer, for two likely reasons: (1) The breasts never receive the benefit of a full-term pregnancy, which renders the breast tissue more mature and thus less susceptible to cancerous change; (2) The breasts are chronically stimulated with more cyclic surges of estradiol, without interruption by periods of pregnancy and lactation. True, nulliparity confers increased risk even in the absence of abortion, but abortion is also one way by which parity is artificially reduced. Consequently, abortion actually confers increased breast cancer risk in two ways.

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The Moral World of *The English Patient*

David Aaron Murray's critique of *The English Patient* ("The English Patient Plays Casablanca," May) reminds me of Stanley Fish's belief that all preferences are principles. In Murray's case, the force that underscores the principle of good filmmaking is his own moral preference regarding a traditional "recognition of a larger struggle between good and evil." However, his discontent concerning the loss of a transcendent moral approach to filmmaking seems to rest more with some ethnocentric reasoning than with any universal maxim.

Take for instance his references to things said by Juliette Binoche's character, Hana. According to Murray, Hana reveals to us a moral or spiritual isolation when expressing that in life there are "No boundaries," and that "We are the countries." Murray believes that these sentiments do not emerge from her own cosmopolitan ideals but rather are emblematic of a contemporary celebration of narcissism. Of course, if the film concluded with Hana's words, then Murray's argument would be compelling. But the storyline leading to the final credits defies his conclusion. In fact, the film projects an antithesis to Murray's conclusion by clearly depicting the tragic consequences that issue from unaccountable and adulterous behavior.

A more provocative interpretation is that Binoche's words help explain a world shaped and formed by political power, and how moral demands have followed this pattern, thus becoming the real business of cultural map-making. Understanding this, Hana concludes that her identity and longing for love cannot be comprehended in terms of geopolitics.

Driving his point further, Murray argues that comparing *Casablanca* and *The English Patient* would help us detect how postmodern filmmaking has deconstructed traditional moral thought. This is an interesting thought, but I believe Murray mishandles the comparisons, not because of what he does with them, but because he doesn't take the comparisons far enough.

Consider Rick and what he demands of his situation in *Casablanca*. Although his situation is desperate, Rick remains unperturbed, and naturally takes matters into his own hands, even to the point of taking the life of another man. No doubt his love for Ilsa was true, but the truth of his love was empowered by the demands of his will. Neither law nor moral code was going to stand in the way of what he believed he needed to do.

Why would this be understood differently in the case of Almasy's love for and commitment to Katherine Clifford? The sin of adultery had nothing to do with Rick's nor Almasy's decision to follow through with a commitment. Both did what was right in their own eyes. When we compare the two stories, the only real difference was that everyone in the 1940s anticipated a "moral" to the story and a happy ending to their cinematic experience. . . .

What *The English Patient* reveals is the undeniable presence of moral conflicts in our world, and thus the complexities of our own stories. In Bogart's moment in film history, his character's stories could never be that complex. He just did what Americans needed him to do. And because there was a perceived consensus of moral principle, Bogie was able to just do it. But for those of us living in this postmodern moment, we have to choose to act in the context of a multitude of moral preferences and a lack of cultural consensus. . . .

Stephen R. Nelson
Wheaton, IL

I found David Aaron Murray's article on *The English Patient* quite interesting in drawing the parallels between this year's "Best Picture" and the time-honored *Casablanca*. But beyond Professor Murray's comparison and contrast effort, I was astonished to see how he, a university teacher of humanities and literature, so glibly misses the point of this powerful film.

For the modern intellectual with "moral sensibilities" (as Professor Murray calls them), *The English Patient* offers a poignant and disturbing look at the power of sin to destroy

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those who choose it and . . . to radiate outward to hurt the community at large. . . .

Private agonies drive public actions, and can be so soul-shattering as to totally possess the inner mental life of a crippled dying man. . . . We of the compassionate religious persuasion might understand that the passionate connection between Almasy and Katherine was a tragic soulful awakening. Unfortunately, it did not lead the lovers to God—on the contrary, it led to death without God—but the yearnings-against-their-will, their overwhelming attraction and desire despite their efforts to avert them are of the very same emotional and spiritual and factual material that dramatic religious conversions are made of. . . .

Sheryl Cornett
North Carolina State University
Raleigh, NC

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David Aaron Murray replies:

I question Stephen Nelson's belief that *Casablanca* embodies a supposedly simpler world of moral certainties and noncomplex characters, while *The English Patient* better comports with today's "complexities." I find plenty of complexity in *Casablanca* (bearing in mind that we're still talking about a Hollywood movie!); on the other hand, I find "We are the countries" and "No boundaries" to be reductively simplistic. But I'm afraid that Mr. Nelson is mistaking moral clarity for simplicity and moral confusion for "complexity."

Mr. Nelson says, "No doubt [Rick's] love for Ilsa was true, but the truth of his love was empowered by the demands of his will. Neither law nor moral code was going to stand in the way of what he believed he needed to do." I'm not sure what this means. When Rick shoots Major Strasser, he is hardly being a Nietzschean. He is saving himself, Ilsa, and Victor Laszlo from capture and probable death. But more than that, he is also preserving Laszlo so that he can continue the fight against the Nazis. He willingly gives up the idea of resuming a relationship with Ilsa, although he loves her, partly because she's married but also because Laszlo needs her to sustain him in his fight. How Mr. Nelson gets out of this that Rick is *defying* moral codes and laws is a mystery.

Nor can we say that the ending to *Casablanca* is a completely "happy" one. Ilsa loses Rick, the man she really loves. Rick abandons the relative wealth, security, and neutrality of his position as owner of Rick's Café to embark with Louis on a dangerous life of guerrilla resistance. The ending is only "happy" to the extent that Rick, Louis, and Ilsa make, in the end, the morally right choices.

Nor is it true that "everyone in the 1940s" anticipated *Casablanca*'s ending. As I noted, America in 1940 still had a strong isolationist tendency. That is precisely what *Casablanca* is about. The film's writers evidently saw Rick at the opening of the movie as representative of prewar American opinion: "I stick my neck out for nobody." Rick emerges from isolation and self-involvement to serve larger moral ideals that require self-sacrifice, and thus models the response that Americans were called upon to make. But contrary to Mr. Nelson's blithe assumption that the film only provided Americans with what they wanted to hear, *Casablanca* was not a box-office smash, and only later acquired its status as a classic.

Sheryl Cornett reads into *The English Patient* a concern with issues of "sin" or "God." I find no evidence for these concerns in the film. Ms. Cornett argues that the love affair between Almasy and Katherine "is of the very same emotional and spiritual and factual material that dramatic religious conversions are made of"—namely, a certain sequence of strong feelings, including the experience of being led to do something against your will. I'll leave aside the question of whether or not an experience of "passionate connection" is always a "soulful awakening." But a number of different things can be made out of the same "emotional and spiritual and factual material." You could find the same kinds of feelings in someone who has converted to Nazism or some other totalitarian ideology. This is precisely the kind of equivalence the film invites us to make. But does the fact that different experiences can be made out of the same "material"—the fact that similar emotions can accompany a love affair, a conversion to God, or a conversion to totalitarianism—mean that the experiences are morally equivalent?

Jews and Christians

Robert Louis Wilken's essay "The Jews as the Christians Saw Them" (May) seeks the reconciliation of Christians with the Jews that they or their ancestors have wronged for centuries, and no one can or should find anything amiss in that. I wrote a not too dissimilar piece for *Commentary* over fifteen years ago.

But can one expect also to see an appeal to contemporary Jews to understand the Christians among them? To sympathize with their

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fears of a totally secular Christmas and Easter season? To appreciate their fear of the consequences of too high a wall of separation between church and state, something vigorously supported by all too many secular and religious Jews? To acknowledge that historically Christianity is a form of first-century Judaism as valid and authentic as rabbinical Judaism?

Too many Jews accept the distorted view that Christianity is pagan, idolatrous, superstitious, morbid, and inhumane. Having the greater guilt by far, Christians have surely the greater need for reconciliation, but when the Jewish authorities had political power they understandably used it in their own interest, including against the nascent Christians. Reconciliation, atonement, forgiveness, and understanding cannot be a one-way street.

Norman Ravitch
Department of History
University of California
Riverside, CA

Robert Louis Wilken's article "The Jews as the Christians Saw Them" raises the issue of Christianity's relation to Judaism. While this subject is worthy of serious reflection, I find some of Wilken's assertions disturbing.

Part of Professor Wilken's article touches on principles for the interpretation of Scripture. While one may agree that interpretation is not limited to understanding the words of Scripture in their historical context, it seems impossible to divorce the historical meaning from meanings we may discover within our own cultural setting. Unless the continuity between the significance of Scripture in our context and that which it had for its first hearers is both organic and evident, we must eventually find ourselves proclaiming "another gospel." It seems out of character for First Things to open the door to a suggestion that we place ourselves under that anathema.

Prof. Wilken writes of a "reorientation of history" as a result of the suffering of the Jews under the Nazi regime and the subsequent establishment of the state of Israel. Observing popular trends in both Catholic and Protestant thinking, I have wondered for some time whether we are moving toward the place where the 1940s Holocaust will join the crucifixion of Jesus as a "redeeming" event that defines our history. . . . However demonic the Nazi terror that was inflicted upon millions of Jews—and members of other groups (including many Christians) judged unfit to live in the Aryan paradise—can the Holocaust really bear this theological weight within the scope of historic Christian faith? As for the state of Israel, given the demographics of a volatile Middle East it seems risky to attach a reorientation of Christian theology to its continued existence. If we have learned anything from the dispensationalists' repeated warning of an imminent return of Christ that somehow never seems to occur, it is the folly of basing Christian doctrine on current events instead of clear scriptural teaching.

Prof. Wilken refers to Origen's view that the destruction of the Temple was the evidence that the Jewish nation was finished. He is thankful that Origen is not St. Origen. But Origen was not alone; Eusebius and Chrysostom were among those who held similar views. One must admit that the idea goes back to the words of Jesus himself, who taught that the owner of the vineyard would "give the vineyard to others" who received his son (Luke 20:16), and that Jerusalem's "house" would be left desolate (Luke 13:35). Expositors through the centuries have generally failed to deal with the fall of Jerusalem in A.D. 70 as a fulfillment of the promise of "the end of the age" that looms so large in the pages of the New Testament. (Unless one is prepared to credit the apostolic church with a total lack of perspicuity regarding the "signs of the times" in the Jewish community of its own era, there is no compelling reason to accept Prof. Wilken's assessment that most New Testament writings come from the period *following* the siege of Jerusalem.) Today, an emerging grassroots preterist movement is finally taking notice of the correspondence between the New Testament's picture of "the end" and the events of the latter part of the first century, giving renewed weight to the arguments of Origen, Chrysostom, and other ancient fathers.

The anecdote about the confirmation service attended by Prof. Wilken's rabbi friend effectively dramatizes the uneasiness contemporary Jews must have when hearing the preaching of the New Testament church. The words of Paul and Barnabas in Antioch of Pisidia suggest that the Jews had repudiated the word of God and therefore judged themselves "unworthy of eternal life." (Acts 13:36) Admittedly these are harsh words, but we must recall (and perhaps one could have interrupted the liturgical sequence to say so) that these words were spoken by *Jews* to Jews. The New Testament is witness to significant theological disagreement within ancient Judaism, and it

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should surprise no one that the apostles repeatedly touched the "hot button" of the leaders of their community and therefore endured persecution, as the rest of the passage brings out. . . .

Richard C. Leonard
Arlington Heights, IL

. . . Robert Wilken reasons from the unexamined premise that the widespread tendency among Christians to concede to Judaism a kind of theological "right to exist" is a movement of the Spirit. I would have thought that unless the Spirit means the Zeitgeist, some argument for the point would be in order. I for one am not yet prepared to take The Holocaust Has Changed Everything as an article of faith; I need more proof and less question-begging, arm-waving, and browbeating.

The more or less articulated notions of a continuing and independent Jewish covenant that follow from this premise tend toward more or less articulate heterodoxy. The New Testament could not be clearer in its proclamation that both Jew and Gentile are called to a single new and eternal covenant in Christ's blood. The old covenant has not been revoked, but it has been fulfilled, and the essence of that fulfillment is the breaking down of the wall of hostility between Jew and Gentile. Both must now repent and believe the Gospel, or be condemned. . . .

John A. McFarland
Boca Raton, FL

Robert Louis Wilken replies:

On the facade of the church of Santa Gregorio della Divina Pieta at the entrance to the Jewish ghetto in Rome and facing the present great synagogue of Rome there is an inscription from the book of Isaiah written in Hebrew and in Latin. It reads: "I spread out my hands all the day to a rebellious people, who walk in a way that is not good, following their own devices, a people who provoke me to my face continually." (Isaiah 65:2-3) In the Middle Ages Jews were forced to listen to sermons addressed to them from the steps of the church as they looked at the inscription. Today Jews walk by it daily and when Pope John Paul II visited the Synagogue of Rome on April 13, 1986 and spoke within sight of it he called the Jewish people "our dearly beloved brothers" and said that in discovering her "bond" with Judaism the Church was searching into her own mystery. It is not "lawful," he continued, to say that the Jews are "'repudiated or cursed' as if this were taught or could be deduced from the sacred Scriptures of the Old or the New Testament." Indeed, the Pope stressed, "the Jews are beloved of God who has called them with an irrevocable calling."

What the Holy Father said on that occasion is a form of biblical interpretation of the sort I was urging in my article. The point is not that "our own cultural setting" should determine the meaning of the Scripture, but that Christian engagement with the Jewish people in the twentieth century has helped us to see dimensions of the Holy Scriptures that were not apparent to earlier generations. Of course the interpretation of the Bible must be related to what we take to be the original sense, but if the interpretation is to be "organic," as Mr. Leonard rightly insists, then it must grow out of the Church's history and experience, and the experience with the Jews in the twentieth century has been unprecedented.

The Old Testament reading for Trinity Sunday is from Deuteronomy 4: "Because he [God] loved your fathers and chose their descendants after them . . . you shall keep his statutes and his commandments, which I [Moses] command you this day, that it may go well with you, and with your children, after you." How differently this text would sound in our ears if there were no descendants of Abraham living today. That there are descendants of Abraham, and that many of them observe the law of Moses as an act of covenantal obedience, is hardly irrelevant to the interpretation of Deuteronomy, or Romans for that matter.

I quite agree that the Christian efforts to understand the Jewish people and Judaism have raised new and perplexing theological problems. It is very difficult for Christian theology to acknowledge the ongoing validity of the covenant with the Jewish people and yet confess with St. Paul "that at the name of Jesus every knee should bow . . . and every tongue confess that Jesus Christ is Lord." (Philippians 2:10-11) That is why all theological discussion about Christianity and the Jewish people has an air of tentativeness about it. How we are to make place theologically for the reality of Judaism, where the Law is the center of religious life, in light of the Church's confession of Christ as Lord and the doctrine of the Holy Trinity is not at all evident to me. But I do know that we cannot ignore the evidence of our experience that interaction with the Jews has helped us to see with fresh clarity the scriptural teaching that Christians have a spiritual kinship with the Jewish people that is unlike our relation to anyone else.

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Catholicism and Catholicity

James Nuechterlein writes in a very reasonable and measured style that commands the reader's respect. Yet there is something in certain parts of his "Catholics at Home" (May) that seems something less than forthright.

He states that "The issue of contraception has created a crisis of conscience among many devout and thoroughly orthodox Roman Catholics. These are not . . . 'cafeteria' Catholics." Though he does not name examples, Nuechterlein would be hard-pressed to give a true, working definition of "orthodox Roman Catholic," and then name persons who fit but refuse to comply with Church teaching on contraception, or anything else, including Scripture. Perhaps the Catholics he wishes to describe are devout (as Luther certainly was), but they cannot in any real sense be thoroughly orthodox. Either the Church and the Pope who leads her have the authority to teach in Christ's name or they don't. St. Augustine stated: "I would put no faith in the Gospels unless the authority of the Catholic Church directed me to do so." As the truly orthodox Catholic position, Augustine's statement puts Martin Luther and the whole *sola scriptura* crowd first in line at the cafeteria. And, pace Mr. Nuechterlein, today's "self-first, Church-second" Catholics are near the end of the same line. They may be devout and spiritual, but they cannot be honestly described as "thoroughly orthodox" if they refuse to submit to the Church's magisterial authority. Part of what it means to be fully Catholic is to accept that Christ's voice speaks through the Church's magisterium. . . .

Larry A. Carstens
North Hollywood, CA

The Rev. Leonard Klein's article "Catholics in Exile" (May) was especially insightful as I tried to fight through the fog raised by James Nuechterlein ("In Defense of Sectarian Catholicity" [January] and "Catholics at Home"). I must admit a certain lack of understanding about Mr. Nuechterlein's use of the term "catholic," and I cannot help sensing a certain Orwellianism about the whole issue. Even if one grants to Mr. Nuechterlein his premise, namely, that one can be *catholic* without being Catholic or Orthodox, one is still left with the task of defining where *catholicism* begins and ends. In the absence of a teaching church with a functional magisterium, to whom does that task fall, especially when new issues arise?

As Pastor Klein rightly points out, Mr. Nuechterlein inexplicably chooses women's ordination and other modern issues as tests of *catholicity*, despite their negative effects on church unity and their radical departure from historical Christianity. Remarkably, Mr. Nuechterlein states in his earlier essay that "we do not consider our confessional position a matter of 'private judgment,'" but he accepts the validity of women's ordination because *he* "hasn't been persuaded by any of the theological arguments against it." Additionally, his reference to loyal Catholics who dissent on *Humanae Vitae* is a hidden appeal to reduce the teachings of Christ to a democratic process—we will simply reject the hard sayings by majority vote. In fact, Mr. Nuechterlein's arguments really suggest that he does not understand the underlying theological concepts.

With respect to the ministerial priesthood, he confesses belief in the real presence of Christ in the eucharist, but he also states that "our pastor's theologically astute and spiritually evocative sermons convey the . . . truths of the faith. . . . I cannot imagine that her holy orders should be in question." Although the role of the priest necessarily involves preaching and teaching, those actions are not unique to the priesthood and do not define it—the priesthood is primarily about the action of Christ who, through the priest, represents His sacrifice of Calvary to the Father. The question of women's ordination is not one of ability (and especially not about ability to preach) but of fitness to act *in persona Christi* in the sacrificial offering. That Christ was a male is an undeniable historical fact, as is His revelation of God as Father. Some might believe these were cultural accidents, but that has never been the understanding of the Church; to insist that the Church change its understanding to remain catholic is absurd. . . .

John F. Rivera
Stamford, CT

The exchange between James Nuechterlein and me should mostly stand as it is. We agree on the nature of the problems of the Evangelical Lutheran Church in America. We seem to disagree on the possibility of solutions. I see "sectarian catholicity" as more fraught with danger than does he. And I continue to agree with Richard John Neuhaus (and Cardinal Manning) that when orthodoxy becomes a matter of private judgment, the point has already been lost. The irony that further unites us, though, is that in the ELCA you can be orthodox only by being a cafeteria Lutheran, creating a confessional position and churchly practice that

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selectively ignores or nullifies much of what the denomination assumes, promotes, or places on the agenda.

At two points I do think I owe further explanation. First, while confessing to the insouciance of my claims about the modern dogmas, I would underscore my genuine conviction that they are much more defensible than Protestants and many Catholics generally assume. I would add only a reminder of the important conserving nature of infallibility. Infallibility does not authorize the Pope to do whatever he pleases. That's what the infallibility of Protestant church conventions authorizes. Infallibility restricts the Pope from rashly undoing what he has received. It works much as tradition does in Orthodoxy. It prevents the Church from being redesigned by, say, Hans Küng. Vatican I's highly restricted decree contains, if one grants the primacy at all, great truth about how the teaching office should function. The doctrine, I continue to believe, demands the serious and charitable consideration of all Christians.

The second point is *Humanae Vitae*. I omitted discussion of it for reasons of brevity and because it does not state a dogma and because everyone must grant the crisis of conscience and credibility that it has brought about. That said, I rush to point out that it is a splendid document about human participation in God's creative work, marriage, and the link between sex and babies. So far as I know, in recent years the only American church body to address this issue with any comparable integrity is the Lutheran Church—Missouri Synod; this is astounding.

Those living in a denomination that attempted a statement on human sexuality that was blithely indifferent to these central things in its pursuit of human autonomy need to take a very close look at *Humanae Vitae*. In particular, its claim that every act of sexual intercourse needs to be open to the transmission of life must be affirmed, lest we engage in the morally and socially catastrophic separation of "sexuality" from marriage and reproduction. The only real point of honest debate, inside and outside the Roman Catholic Church, is whether married couples, understanding that any pregnancy must be accepted as the will of God for the transmission of human life, should be restricted to one particular form of limiting and spacing births. Of course, this teaching has created terrible turmoil and pastoral problems, and the leadership's record in interpreting it and handling the debate and repercussions has too often been inadequate. Still, the warnings of Paul VI have been prophetic, even as the resistance of faithful laity continues to press the question of the correctness of one crucial conclusion of *Humanae Vitae*. But that's not all that it is about. The rest commands respect and assent.

(The Rev.) Leonard R. Klein
Christ Lutheran Church
York, PA

James Nuechterlein replies:

Larry A. Carstens says it is incorrect for me to describe conservative Catholics who nonetheless dissent from the Church's teaching on contraception as "thoroughly orthodox." They can't be orthodox, he says, "if they refuse to submit to the Church's magisterial authority." Well, yes, but that rather misses the whole point at issue, which is that the ban on contraception has created a crisis of conscience among Catholics who *on every other point of faith and morality* are obedient servants of the Church but who, as I put it, "find themselves unable to conform their beliefs or practices to *Humanae Vitae*." These are, I repeat, "not liberal or 'cafeteria' Catholics," and it is the present crisis of the Church that—as one study after another has shown—so many of her most loyal sons and daughters feel themselves condemned, so to speak, to unorthodoxy.

John F. Rivera is right to suggest that only the Roman Catholic Church can define "catholicism." But "catholicity," I would argue, is for the universal Church—guided by the Holy Spirit—to determine.

Post-Reformation issues such as papal infallibility, the Marian dogmas, ordination of women, and contraception are "tests of catholicity" precisely because they divide people who consider themselves part of the one, holy, catholic, and apostolic Church. On the specific point of women's ordination, I was not claiming for myself the right of private judgment. But I do include myself among those many Christians who find no compelling theological objections to it. We are not persuaded that the fact that Jesus was a man precludes women from officiating at the Eucharist. Jesus' maleness is not at the heart of the eucharistic mystery.

Finally, Mr. Rivera says that "to insist that the Church change its understanding to remain catholic is absurd." I agree, and I cannot understand what leads Mr. Rivera to think otherwise.

I agree with Pastor Klein that the exchange between us can stand as it is.

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Open Borders?

Although I agree with Father Richard John Neuhaus that immigration and border policy is a legitimate area of public debate (While We're At It, May), I think his view of the Mexican border situation is rather superficial in historical context.

The Mexican War was driven by the doctrine of Manifest Destiny, which legitimated national expansion as the building of an "empire of liberty." It was the early Texas settlers who refused to honor the terms of *Mexican* citizenship. I don't regret this, but I do think American self-righteousness about borders and citizenship is absurd. Since I value the American heritage of religious, civil, and economic freedom, I would not wish the Treaty of Guadalupe Hidalgo undone—even though my Hispanic New Mexican mother's people were among those unwillingly annexed in 1850. I feel a distant sense of kinship with Mexicans but no political allegiance to the regime in Mexico City.

Let us recall, however, that the demand for tight control of national borders and over the hiring of aliens is relatively recent. Quite early in our history, the Jeffersonians opposed the Alien and Sedition Acts; and even the nativists of the last century were concerned primarily about Catholic immigration and access to the franchise. Before World War I and the restrictive legislation of the 1920s, passports were not usually required in peacetime for those crossing national borders. Until recently, employers were not forced to act as law enforcement personnel because the hiring of workers—whether native or foreign-born—was rightly regarded as an aspect of the employer's legitimate freedom of contract. Throughout most of American history, such control over borders, persons, and voluntary contracts would have been considered incompatible with the limited scope of our government. The *Wall Street Journal* is quite right about this issue. . . .

One final thought: Isn't it remarkable that we worry so much less about the Canadian border than about the Mexican border? If the porous nature of the northern border doesn't threaten our sovereignty, then why should similar openness threaten us on the southern border? Surely the editors of First Things would not suggest that having family ties to Canada and to, say, German Lutheranism would be, somehow, Un-American! The free movement of people, goods, and cultural influences between neighboring countries in peacetime can only threaten those who have abandoned belief in limited government and a market economy.

W. Robert Aufill
Stillwater, OK

Misrepresentation

For some reason, the May issue's Public Square chose to pick two sentences out of my review of Jefferson Powell's book on the Supreme Court and twist those few words to portray both Powell and me as at least "confused" and perhaps as defenders of an imperial judiciary. I won't bore readers with the details of these strained interpretations. Instead I'll point out what Father Neuhaus, irresponsibly, never mentions: a major theme of both Powell's book and my article is that the Court can and does abuse the power of judicial review.

As my review explicitly says, much of Powell's book "attacks the secular myths by which we idolize the Constitution and the Court," and it prefers the "corrigibility" of electoral politics to the "pretensions" of judicial review. I myself argued that the judges' unelected status "creates the risk that [they] will simply enact their own policy preferences, leaving the citizenry no easy means of correction," and thus judges should stick close to the text and history of a constitutional provision. I also attacked *Roe v. Wade* for "finding a highly controversial moral theory—this time of radical individual autonomy—in the 'due process' provision, . . . with little effort to justify the decision by the traditional standards of constitutional reasoning." Did Fr. Neuhaus actually read my article?

Contrary to Fr. Neuhaus' charge, I understand the breadth of *Roe*'s holding quite well; my review just didn't say anything about its breadth. What I did was refer to some state laws, undeniably on the statute books, that allow abortion in many or all cases. Yes, *Roe* makes these statutes mostly superfluous; but what if *Roe* were overruled? Some states would enact new abortion prohibitions, but others would likely protect abortion legislatively. Thus would arise the argument I discussed (and criticized) in my review: that the Constitution should be interpreted in light of certain natural law principles to require (not just allow) states to prohibit abortion.

Thomas C. Berg
Cumberland Law School
Samford University
Birmingham, AL

RJN replies:

I am grateful for Professor Berg's clarification, since it was not evident

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from his article that he understood the breadth of the abortion regime established by *Roe* and its judicial progeny.

Hierarchy, Good and Bad

In Father Neuhaus' insightful discussion of Amitai Etzioni and the new communitarians (Public Square, May) there is one slight misunderstanding that I would like to clear up. Fr. Neuhaus quotes the following passage from my book, *The New Communitarians and the Crisis of Modern Liberalism*: "Reeducation is by nature inegalitarian. In any program of reeducation a self-selected group of intellectuals asserts that it has the authority to decide what kind of character and belief everyone should have." As Fr. Neuhaus points out, here I am arguing that communitarian reeducation (like all education) is by nature inegalitarian. But I do not do so on the assumption that egalitarianism is good. Rather, my point (made clear by succeeding paragraphs) is that we should not take new communitarians seriously when they claim they are merely reinforcing existing egalitarian values.

My central concern with communitarianism in its current form is that its adherents seek to impose a new psychology, a new history, and even a new reality on the public. Rejecting tradition, religious doctrine and revelation, the intent of the drafters of our Constitution and laws, and the very facts of our history (all of which limit and lend authority to proper education), they seek to remold our characters according to their own left-liberal, secular ideology. My complaint is not that the new communitarians are inegalitarian. Indeed, my first book, *Virtue and the Promise of Conservatism: The Legacy of Burke and Tocqueville*, identifies hierarchy as an essential element of any decent society. I am against the new communitarian hierarchy because it is the wrong hierarchy—it would replace God and traditional limited leaderships with secular, left-wing elites.

Bruce Frohnen
Arlington, VA

For the Record

Re While We're At It (May): allow me to correct the record. The Franciscan arrested with Bishop Lynch in Dobbs Ferry was baptized Christopher, not Michael. His name in religion is Brother Fidelis, not Fidelius. And he's a friar, not a monk. Monks for the most part live in monasteries; friars hit the streets—where they sometimes get arrested in front of abortion clinics. I know these things because I am Brother Fidelis' proud father.

Joe Moscinski
Neshanic Station, NJ

RJN replies:

I, and the report I relied on, stand corrected.

Hauerwas No Enemy

In the May Public Square ("Michael Baxter and the Theological Salad Bar") I am characterized as "the sworn enemy of [Stanley] Hauerwas," a professor at Duke University. The statement is not true.

Richard P. McBrien
University of Notre Dame
Notre Dame, IN

I Know Not the Secret

I call, but my finest thoughts come not out of their sanctum.
Yet when I am silent, they quietly open the door
And come to stand by my side. And I welcome them and rejoice
That they have come, for I know not the secret of their hiding places.

Charles Gordon Rex

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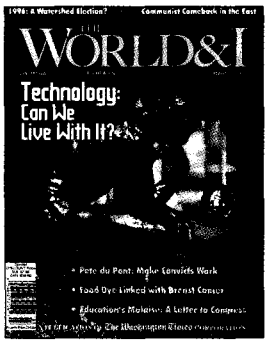

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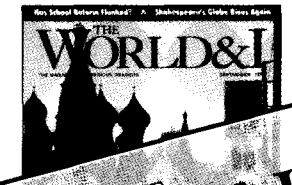

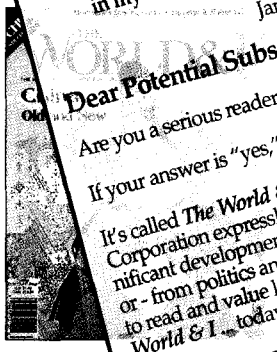

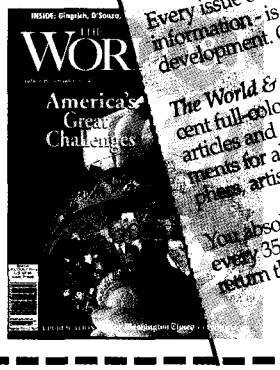

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This Time

Remembering the Riots

James Nuechterlein

Of the various disasters that littered the 1960s, none was more deleterious in its effects than the series of black riots that began in Birmingham in 1963 and became an annual rite of summer for most of the rest of the decade. The best-remembered of them occurred in Watts in 1965, but the two most destructive in their toll on lives and property took place thirty years ago this summer—the first in Newark and then, the worst of all, in Detroit. I was in Detroit during the disturbance there, and my memories of the event are still vivid.

The riot began early in the morning of Sunday, July 23, 1967, when the police raided an illegal bar in the inner city. A crowd gathered in protest, and within a short time mobs of young men were engaged in burning, looting, and acts of random violence. Earlier riots had been blamed on police "overreaction" to minor incidents, so authorities did not at first dispatch large numbers of officers to the area. They further tried to keep things in check—based again on presumed lessons from disturbances elsewhere—by persuading the media to impose a news blackout. Neither tactic worked, however, and things were soon utterly out of control. The rioting spread to take in fourteen square miles of black neighborhoods, and unlike some earlier outbreaks, it was quite indiscriminate: mobs torched and plundered black businesses as freely as white ones and burned down a number of black homes as well. In the latter stages of the riot, blacks from outside the inner city entered the riot zone to participate in the looting.

My wife and I were visiting my brother's family in Livonia, a western suburb of the city. We learned nothing of the riot until early Sunday afternoon when other members of the family arrived to report that in their drive from the city they had seen vast clouds of smoke rising from black neighborhoods. Soon afterward the media lifted the news blackout and we began to get the details.

By Monday morning, news reports indicated that the police and National Guard had matters under control, and so, as previously planned, we drove into the city to stay with my sister at her apartment. Kay lived, by choice, in a racially mixed neighborhood near downtown, only a few blocks from the riot area. That night the rioting resumed and intensified.

It was hot and the apartment had no air-conditioning, so we kept the windows open. Playing cards at the kitchen table, we could hear the sound of rifle fire. A major expressway separated us from the riot zone and we felt no great sense of danger, but the continuing—and increasing—background noise of gunfire, much like a war movie soundtrack, made for an unsettling, even surreal, experience. After midnight, we heard the rumblings of what we later learned were troop vehicles moving along the expressway. For the first time in the decade, a riot had gotten so out of hand that the authorities had to call in federal troops. It took five days to restore order, and afterwards there were 43 dead, 7,000 arrested, 1,300 buildings destroyed, and 2,700 businesses looted.

The riots in Detroit and elsewhere had a devastating effect not just on the communities themselves but on the entire nation. The assorted tragedies and lunacies of the sixties came near to wrecking the national morale, and nothing contributed more to the sense of things out of control, of a nation falling apart, than the ghastly parade of "long, hot summers." In 1967 alone, according to a recent report in the *New York Times*, there were almost four dozen riots and over one hundred lesser incidents of civil unrest. The antiwar protests of the time revealed a society bitterly divided over politics. The riots, along with the widespread and often violent campus disturbances, seemed to indicate a country descending into anarchy.

The riots also shattered the fragile national consensus that had begun to emerge following Martin Luther King, Jr.'s March on Washington in 1963. A majority of white Americans had been increasingly persuaded by the moral appeals of Dr. King and had come to accept the argument that American society had for too long relegated black people to second-class citizenship. There was a readiness to make amends. But the riots eroded much of that good will. They served the cause not of reformers but of racists, and antagonized millions of Middle Americans who were open to change but closed to the idea that the nation's racial sins were so great that it deserved to be torn apart. The riots polarized a society that had been potentially ready for significant reform.

The response by American liberals to the riots made things worse. Many of them found ways to excuse the inexcusable by rationalizing the mob nihilism manifested in Detroit as radical political protest. They even managed to persuade themselves, against all evidence, that the riots would have a positive net effect: white America would finally be brought to see how desperate was the black plight and thus would be moved to take remedial action.

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The official government response compounded the confusion. President Johnson's National Advisory Commission on Civil Disorders (the Kerner Commission) concluded in 1968 that the single most important cause of the riots was white racism. It would not have been implausible to argue that white racial attitudes were most responsible, over the long run, for the disabilities of black Americans, but to attribute the riots to white racism stretched the causal link to the breaking point.

The Kerner Report also, however inadvertently, demeaned black people by denying them moral agency. It was one thing to recognize the genuine frustration about real grievances that led some blacks to lash out blindly, something else to suggest that the black situation was so hopeless—and so utterly dependent on white behavior for any kind of amelioration—that such lashings-out by blacks constituted the only line of action open to them. The report perpetuated the idea that black people had identities only as historical victims, people to whom things simply happened. In post-segregationist America, that was no longer believable.

Most white Americans rejected the claim that they were incorrigible racists and so simply shrugged off the Kerner Commission's indulgent exercise in guilt-mongering. They also, in the light of mounting evidence of the failure of Johnson's Great Society programs, viewed with skepticism the Commission's claim that only massive government programs offered any hope for making things better for black Americans. Indeed, the perceived failure of welfare-state liberalism to solve the nation's racial problems contributed mightily to the mounting suspicion that there might be better responses to social ills than simply spending vast amounts of money on them. The first glimmerings of what Bill Clinton would much later call the end of the era of big government can be found in the baffling incapacity of the received liberal wisdom to offer workable prescriptions for the urban racial crisis of the 1960s.

The best that can be said thirty years later is that our racial situation, however bad, is better than it was in 1967. That is pitiably small consolation. The City of Detroit has never fully recovered from the events of three decades ago. Neither, sad to say, has the rest of the nation. FT

Weather Forecast: Prolonged Dry Period

The cattle who should, according
to folklore, be lying down at the approach of rain,
stand skeptical in a field of ragged green. The sky,
a surging pewter, exhibits a tatter of gulls.

Like cows, I live under a conditional heaven;
clouds keep tearing apart, then mending,
heavy with partial images. Moments ago
a sheaf of rain, weighted with promise, breached

the foothills. Now its silver ghost
breasts the cow pasture, looms closer, then passes
barely a hundred yards to my left. It
never even blesses my forehead with its fierce

mist. In tune with the random weather,
its errors of judgment, I wait. But what?
A wind from the south? A green
perfection? A seven-year drought?

The forecaster preaches his dogma, predicting
high pressure as irritating as intractable optimism;
he may prove wrong. I long to be soaked through.
I want it to pour, relentless, for weeks.

Luci Shaw

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Opinion

"Catholic Gobbledygook"

Robert Royal

For the *New York Times* and most other mainstream media it has become axiomatic: *De Catholicis, nil nisi malum.* (Roughly: If it's Catholic, bash it.) When the Catholic Church, allegedly ignoring human complexity and weakness, proclaims the indissolubility of marriage (on the basis of Christ's words in Matthew 19:6 and the Pauline notion that the fidelity between man and woman is the image of Christ's love for His Church), it is being inhuman and heartless. When the Catholic Church, taking into account human complexity and weakness, declares a particular marriage null (as in the now notorious case of Sheila Rauch Kennedy), it is being, well, inhuman and heartless. The contradiction gives no pause. The Church has the wrong view of sex and marriage, and therefore whatever it says and does must be wrong.

For Sheila Rauch Kennedy, divorce from U.S. Rep. Joseph Kennedy II was painful enough, but the Church's annulment of their twelve years together, as though that time were meaningless, was the last straw. The former Mrs. Kennedy reports in her book *Shattered Faith: A Woman's Struggle to Stop the Catholic Church from Annulling Her Marriage* (Pantheon) that when she received the letter informing her of her husband's intentions, she immediately ran into the bathroom and threw up. To judge by the publicly documented record of the Kennedy boys' antics with mafia molls, movie starlets, babysitters, and no doubt other players to be named later, this was probably not the first—or the last—time one of the Kennedy girls has had such a reaction.

The subtitle of the book tells all for those in the know: "a woman" has been the victim of the tyranny of Rome. This case, we are to presume, reveals the unholy intersection of the Pope, the Boston Irish mafia (clerical and lay), and the immense power and prestige of the Kennedy money and name. Up against that exclusive men's club, how could the former Mrs. Kennedy ever hope to get a fair shake?

If truth be told, there are many Catholics, even those not charmed by the feminist and liberal paradigms, concerned about the way the American Church in recent years seems to have become in its frequent granting of annulments what Sheila Rauch Kennedy has dubbed "a Catholic Nevada." The Church cannot ignore its pastoral responsibility to enable people who entered into sacramentally invalid marriages a chance to remarry within the Church. At the same time, it must champion the indissolubility of marriage by both word and deed. Under current circumstances, this means being publicly misunderstood about a complex and highly emotional issue. There is probably nothing else to do but grin and bear it—and try to give better explanations in the future about the nature of an annulment.

Still, a very high percentage of all the annulment cases presented throughout the world are presented in the United States, and most of the cases presented before tribunals in this country result in declarations of nullity. Is something truly amiss here?

The answer is partly yes, partly no. If you ask priests you trust—particularly those who serve on marriage tribunals—you get a far different picture from the popular impression. As one Defender of the Bond (the priest designated in every case to present arguments for the sacramental validity of the marriage) explained it to me, there are three reasons America has such high annulment rates. First, there are lots of Catholics in America, more, we fail to realize, than in such countries as Italy and France. Second, Americans take law seriously in ways that Catholics in other countries do not, and many of them want to be able to remarry in the Church with a good conscience. Finally, the American Church is wealthy, which means it can afford the canon lawyers and psychologists needed for the marriage tribunals that other national churches should run, but cannot. In addition, the high percentage of annulments granted to cases presented reflects a weeding-out process that occurs even before cases come before a tribunal.

Still, it looks bad and perhaps the whole process needs more careful scrutiny. Since Vatican II and the New Code of Canon Law, there have been significant developments of doctrine on marriage stemming from the work of Dietrich von Hildebrand and John Paul II himself. These developments build on earlier evolution in this century of understanding what a *sacramental* marriage must be in Catholic terms and taking into account relevant discoveries of psychology. This seems to be the main point of confusion and contention.

Briefly, the theology of this sacrament distinguishes between the natural bond in marriage, a civil or legal marriage, and canonical matrimony. No little heartache arises when a former spouse—usually a woman alone with children, like Sheila Rauch Kennedy—feels that the annulment, beyond render-

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ing a verdict about the sacrament, threatens to erase her former life and render her personally meaningless in the process.

Many people feel that divorce merely recognizes the obvious fact that things went wrong after the wedding ceremony. Sheila Rauch Kennedy, for instance, actually petitioned for the divorce. Annulment, however, means that there was a sacramental defect at the outset, a ruling often erroneously thought to mean that the affection experienced and legal bonds incurred, including the legitimacy of children, never existed.

In current Church teaching, there are three grounds for declaring a marriage sacramentally invalid. The Church has always taught *consensus fecit matrimonium*, that consent forms the bonds. Tribunals must therefore resolve the question whether proper consent existed at the time the vows were exchanged. External force or fear may be factors, as in the old-style shotgun wedding. But there are as well three obvious internal impediments to consent: lack of sufficient reason (almost never cited, but sometimes connected with drug use or mental incompetency); grave lack of discretion; and diagnosable psychopathology. Little controversy has arisen about the first and last categories, and so we must turn to grave lack of due discretion, the Kennedy claim.

St. Augustine identifies three basic goods in marriage: unity, fidelity, and procreation. Defects in the intention or capacity to observe any of these renders the sacramental marriage null, if the defect can be proved "to a moral certainty," whatever may appear to be going on during and after the marriage ceremony. Obviously, these matters involve less-than-ironclad judgments. At least in theory, it may be that almost any couple getting married will lack due discretion in some respect, laying open the possibility that virtually any marriage that comes to grief may also be declared sacramentally void (only 338 annulments were granted in America in 1968; more recently, the annual figure is around sixty thousand). The Pope has been giving yearly addresses to the Roman Rota (the final court of appeal) arguing that due discretion must generally be understood to mean that ordinary people in ordinary circumstances are capable of the high commitments to which they are called by life in Christ. About the United States, he has observed that the process is "too easy and hurried."

Yet even granting that there may be problems both of perception and subjective judgment, tribunal practice remains, for the most part, rigorous. A few tribunals are notoriously lax. Even so, where the initial tribunal grants the annulment, the case is not simply closed. It is automatically reviewed by another tribunal. A suffragan diocese's decisions are reviewed by the metropolitan; the large metropolitan archdioceses often review one another (New York handles Philadelphia, Baltimore handles Washington). Ultimately, any party can appeal to the Roman Rota (as Sheila Rauch Kennedy did), or more rarely to the Pope. There may be problems with the process, but if so it is not for want of attention to legal safeguards. Adequate opportunities to present evidence are provided all along the way for an ex-spouse who contests the annulment.

Can this whole process be influenced by the wealth and prestige of one or both of the parties? Undoubtedly. And that is why in such cases—where a local tribunal might truly come under pressure from powerful forces—the decision is often made elsewhere. A tribunal director pointed out to me that when Princess Caroline of Monaco sought an annulment of her first marriage, it was immediately sent on to the Roman Rota because her father, as head of state, might be perceived as being in a position to influence the outcome. In the event, it took ten years (the first husband was already dead by that time) for the Rota to grant an annulment. An experienced priest remarked to me about notorious cases involving well-known figures that "the Kennedys and the Sinatras get annulments, not because they're rich and famous, but because they're screwed up."

In many ways, you have to sympathize with Sheila Rauch Kennedy and women in similar circumstances. Joe Jr. only has to mumble a few apologies about "mistakes" in the relationship and the good voters of Massachusetts allow him to go on with his political career. She is left alone with the children, feeling that, as her then-husband repeatedly told her, "You're nobody." Many people experience healing after an annulment and some are encouraged by the better tribunals, given deep-seated problems that have been uncovered, to go through counseling before thinking about remarriage. It's tragic that nothing of the sort occurred here.

Her book raises some important issues, but it is not likely to bring her or anyone else peace of heart. An umbrella organization of dissident Catholic groups has already fastened on the case to make the sweeping claim that the Church's whole teaching on marriage is hypocritical. Their solution is not to stop abuse, if and when it exists, but to abandon principle.

A more careful reading points toward a different moral to this story. Sheila Rauch made a bad bet on Joe Jr., who, she claims, called the whole annulment business "Catholic gobbledygook" and added "nobody actually *believes* it." It's easy to understand why she's angry. But she also needs to recognize the truth about who rolled the dice in this marriage, which faith was shattered, and by whom. By her own telling, it was not the Catholic faith that proved false, but her trust in a fallible human being.

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Democracy's Private Places

Philip Bess

For centuries the public square and the street have been the spatial media of public culture. But just how important is traditional public space—urban space—to a genuinely public culture? In an age of increasingly sophisticated electronic communications, does civil society require the traditional physical and spatial arrangements of the *civitas*? I don't know the answers to these questions. But to me the abandonment of traditional urban culture and traditional urban form seems symptomatic of a declining interest in public culture. Public space and civic buildings once received a high degree of aesthetic and financial attention, of a sort that indicated their public importance. That attention increasingly seems directed elsewhere.

I was struck by one small expression of this recently, in two separate conversations. One was with an acquaintance who had recently spent an evening with friends out in some middle-class suburb of New York: two parents, one child (who the parents had decided would be an only child), and a large house with three bathrooms. This struck my conversation partner as odd. What are they doing out there with all those bathrooms? The other conversation was with an architect friend in Chicago who mentioned to me that she had left her old job in the private sector for her current job in county government because she was "tired of doing $60,000 bathrooms for clients in the north-shore suburbs."

Both comments touched a nerve, because I had recently (and frustratingly) finished third in a little local competition to design a vacation house—and noticed that the first and second place winners had both included three full bathrooms in their designs for a house of less than 1,800 square feet. Silly me; I had only thought to include one and a half baths! Feeling all of a sudden out of touch with America in my big city neighborhood and my small town academic environs, I began researching the real estate advertisements of my local papers. There I discovered how apparently important bathrooms and bedrooms have become to the definition of the good life in the suburbs.

The growth and proliferation of the automobile suburb is due largely to post-World War II federal transportation and housing programs that clearly appealed to some deeply ingrained American tendancies and desires, but suburbs are actually a nineteenth-century invention. Proximate creations of the passenger railroads, pre-Depression suburbs always had at least a few architect-designed, quasi-palatial dwellings for their wealthiest residents. In the arriviste postwar suburbs of today the democratization of luxury proceeds, but this time promoted less by architects than by professional builders in the speculative housing market. One manifestation of this appears to be the increasing prominence of master bedroom "suites," and the increasing number of bathrooms, found in houses targeted at the middle and upper-middle classes.

Evidence for this trend is certainly ample in the "home guide" section of any American newspaper. In a recent edition of the *Chicago Tribune* I found a feature article about a thirteen "custom home" development at the outer edges of suburban Chicago. The different three- and four-bedroom residences range from 2,800 to 3,800 square feet. All feature master suites segregated from secondary bedrooms. One suite has a walk-in closet that "looks like it could accommodate the Mormon Tabernacle Choir," and two-person showers sans doors ("bigger than some cars"). Each house has multiple bathrooms, several have four, and one has six.

We can hope if not presume that most of these houses are well built. It seems noteworthy however that none of them are either architect designed or (from the photographic evidence) aesthetically distinguished. Moreover, if the prominence of their bedroom suites and bathrooms is not necessarily typical of most new housing construction, neither is it particularly unusual or confined to automobile suburbs. In the same paper there are numerous advertisements for new "luxury townhomes" in older Chicago railroad suburbs, many featuring two bedrooms and two and a half baths. Increasingly, the market assumption appears to be that every bedroom in new residential construction requires its own bath. This has been common in luxury residential construction for most of this century, but it appears now to have trickled down to suburban middle-class housing as well.

What, if anything, should one make of this? At one level, I think the appropriate answer is "not much." Within the requirements of justice, people with money are and should be free to spend it pretty much however they want, and I have no interest in or passion for denigrating the virtues of private home ownership, personal hygiene, and modern plumbing. At another level, however, a residential *ideal* of one bathroom per bedroom can have the insidious effect of becoming the standard by which housing comes to be deemed *acceptable*. And were this ratio to become normative, embodied in building codes and other institutional regulations, it would make it much more difficult to create affordable housing for that sizable sector of society unable to buy in affluent suburbs.

But I think there are interesting cultural issues here as well. Architecture high and low expresses and embodies, intentionally or not, cultural ideals and

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aspirations; and in light of the residential building industry trends featured in the *Tribune*, it may be worth reflecting upon what some of these are. Journalist Karen Tensa, reviewing the recently published *Bathrooms: Inspiring Ideas and Practical Solutions for Creating a Beautiful Bathroom*, expresses the view that today's opulent bathrooms and bedrooms represent a rejection by Americans of our "puritanical roots." This is plausible enough, as far as it goes; but the implications of this may be larger than she realizes, and not entirely benign.

Bigger and more luxurious bedrooms and bathrooms seem to me just one small physical manifestation of that shrinkage of the public realm happening reciprocally and in tandem with America's true growth industry, the care and tending of the autonomous self. Like the decline of the street and the square as active public spaces—and the demise of the alley, the ubiquity of the driveway, the transformation of the garage door into the front door, the demise of uninterrupted curbs on residential blocks, and the relocation of domestic life to yards and family rooms at the rear of the house—the growing number and importance of domestic bathrooms and bedroom suites is yet another way we materialize in our built environment our culture's turn from the civic to the private.

This turn to the private would have dismayed but not surprised Alexis de Tocqueville. Indeed, Tocqueville recognized individualism as a peculiarly democratic proclivity. His 1840 characterization of individualism ("a mature and calm feeling, which disposes each member of the community to . . . draw apart with his family and friends, so that after he has thus formed a little circle of his own, he willingly leaves society at large to itself") goes far toward describing a social reality that subsequently has taken physical form in the American suburb.

But I have one more contemporary bathroom story to tell; and though it is not a story of suburban bathrooms, it too is a tale about architecture, public culture, and democratic ideals.

The central campus of the University of Virginia is considered by many the most beautiful spatial and architectural ensemble in the United States. Designed by Thomas Jefferson as a model "academical village," the University's purpose was to help create and promote an educated citizenry, which Jefferson thought necessary for the success of an emerging American democracy. For an Enlightenment luminary such as Jefferson, reason rather than Church or Crown was to be the authoritative principle of America, and this dictated among other things that a library rather than a church or chapel would occupy the premier position at Mr. Jefferson's University. The Library (or, as it is known by all, the Rotunda) therefore sits atop the highest point on the original campus. A secularized version of the Pantheon in Rome, the Rotunda terminates the north axis of a large green space—The Lawn—that itself is flanked on its east and west sides by a series of ten residential pavilions interspersed between some fifty-six cell-like rooms connected in front by Doric colonnades. The pavilions were designed originally for double duty as both faculty residences and classrooms, and the cell-like rooms were built to house the student population.

Today, Virginia's student body numbers approximately seventeen thousand and the full-time faculty some twenty-four hundred, and the University's physical facilities have grown accordingly. The Rotunda is no longer the University library but remains, with The Lawn and the rest of Jefferson's original design, the symbolic center of campus life. Likewise, the pavilions are no longer used as classrooms, but are instead residences occupied by various deans and administrators as well as select general faculty members. The student rooms, however, continue to be occupied by an elite group of senior undergraduates, chosen on the basis of outstanding academic and extracurricular performance at the University. This is regarded as a singular honor; and student residence "on The Lawn" is highly coveted in spite of several inconveniences—including the fact that student rooms are equipped with neither toilets nor showers (which are located in out-buildings behind the student quarters).

At Virginia, therefore, even if only for an academic year, some students voluntarily forfeit personal comforts available in every other University residence facility, for the honor of living on The Lawn and the pleasure of its building and spatial arrangements. It seems worth noting as well that the design of this premier architectural icon, this intended microcosm of a fledgling democratic culture, is strikingly hierarchical. Jefferson physically and spatially subordinates the student rooms to the faculty pavilions, and both to the majesty of the Rotunda and The Lawn which is the University's public square; and this hierarchical arrangement of buildings and spaces together embody and express the shared purposes of the academic community.

Both Jefferson and Tocqueville believed that democratic liberty depends upon cultural habits of self-restraint and concern for the common good. But Tocqueville recognized that the conflicting democratic ideals of freedom and equality tend themselves to undermine the self-restraint necessary for democracy to work by creating a restless and dynamic social milieu that fosters envy, individualism, and that unlimited desire for material pleasures that has become contemporary consumerism—which finds a small expression in the proliferation of the "post-puritan" domestic bathroom and a large expression in the decline of civic architecture, the street, and the public square. And although both Jefferson and Tocqueville were articulate advocates of democracy

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as the form of government best suited for a just society of free human beings, Tocqueville the French Catholic aristocrat had a decidedly stronger sense of original sin and the corruption of human nature than did Jefferson the Deist Virginia gentleman—and hence also a stronger sense of the fragility of democratic government, the corrosive agents to which it is vulnerable, and the kinds of character virtues necessary to sustain it.

Our dominant moral imperative today is expressive rather than renunciatory, and we pay an aesthetic, spiritual, and cultural price for this. That the rising status of the suburban bedroom and bathroom coincides with the decline of the public realm and the nadir of civic architecture is not, I think, by chance. The irony of Mr. Jefferson's University is that the young democratic culture it celebrated in such enduringly transcendent beauty may have become, in its loss of individual self-restraint, a democratic culture almost wholly incapable of producing transcendent civic architecture.

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Economics as Humanism

Michael Novak

For more than a century now economics has been advanced and practiced as a science, on the model of physics and mathematics. It was not always so. From Adam Smith's *Inquiry into the Nature and the Causes of the Wealth of Nations* in 1776 until well after the publication of John Stuart Mill's *Principles of Political Economy* in 1848, economics was viewed as a branch of moral philosophy astonishingly underdeveloped by earlier philosophers. It seems hardly possible, yet it is true, that before the time of Adam Smith no classic author—not Aristotle, not Aquinas, not Bacon nor Descartes—had asked about the cause of the wealth of nations in any sustained and fruitful way. Such an inquiry may well have been of great social utility, had it been successfully pursued in earlier, poorer centuries. But the problems of political order and the rule of law were of such importance—neither person nor property being safe from marauders, brigands, and feuding princes, whether in Europe or in other places on the planet—that the development of economics required the prior development of politics and law.

During our own century, a school of economics much disdained by the leaders and the general run of professionals in the field (who were more and more attracted to the scientific model, and particularly to the strengths and beauties of mathematics) has restored economics as a field worthy of investigation by moral philosophy. The school is known as the Austrian School, the school of "classical liberals" or, in F. A. Hayek's preferred description, "Whigs." Let me state the accomplishment of these Whigs starkly: As a result of the inquiries of the Austrian School, it has become clear that economics is at least as much a branch of moral philosophy and the liberal arts as it is a science.

This result was the fruit of three investigative strategies favored by the Austrian School. The first strategy was to attend to the *subject* in economic activities as well as the "objective" factors of production. "Why did economists fail to recognize that incentives remain relevant in all choice settings?" asked Nobel Prize-winner James M. Buchanan in 1991. "Why did so many economists overlook the psychology of value, which locates evaluation in persons, not in goods? . . . Why was there a near total failure to incorporate the creative potential of human choice in models of human interaction?" Taking advantage of cross-cultural studies of the work ethic, social trust, individual initiative, willingness to risk, patterns of cooperation, and other moral habits—together with studies in decision and game theory on the dilemmas that acting subjects typically face—the Whig economists have been able to focus attention on incentives, values, information, and choice, both private and public, including activities of deliberation, reflection, and selection.

The second of the Austrian strategies was to inquire into the concept of human action. The idea was to deepen both our understanding of economic action and its relationships with the other sorts of human actions. Actions begin in choice, and thus Ludwig von Mises opens his classic work *Human Action: A Treatise on Economics*: "Choosing determines all human decisions. In making his choice man chooses not only between various material things and services. All human values are offered for option." But humans not only act, they tend to act in patterns—in economic actions as well as political, religious, and cultural—and the Whig inquiry involved at least rudimentary inquiries not only into atomic human action considered in isolation, but also into characteristic actions or habits or virtues, and thus ultimately into a theory of human character.

The third Austrian strategy was to isolate and highlight the efficient cause of economic activity, the dynamic factor in economics—the habit of enterprise. The source of creativity, invention, even revolution in the way economic activities are carried out, this habit is the engine of change in economic devel-

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opment. Consider the recent experience of Central Europe: Some countries tried to move from socialism to capitalism by abolishing price controls, some began to respect and protect rights to private property, and some even began to permit the private pursuit and accumulation of profit. But even all these together no more constitute an active, capitalist economy than dry wood and air constitute a fire. Socialism inculcates in its people a debilitating passivity, and a formerly socialist people might well have waited for the state to do something else, without doing anything themselves. Capitalism did not properly begin until acting subjects looked around, noticed what could be done, and seized the initiative. In Poland, for example, half a million new small businesses were begun in the first six months after the Revolution of 1989. That is what made the transformation real.

These three Austrian strategies—attending to the human subject, investigating the sources of human actions, and emphasizing the habit of enterprise—have led in the last thirty years to a new focus on "human capital." The term "human capital" calls attention to acts of insight such as the entrepreneur noticing significant points that others fail to see: it thus stresses intellectual skills. But while many people have bright ideas, only some of them have the other qualities necessary for entrepreneurship—the moral qualities, such as boldness, leadership, know-how, tolerance for risk, sound practical judgment, executive skills, the ability to inspire trust in others, and realism. Human capital, even taking into account only matters of economic significance, is a concept of broad moral range. In recent years, in fact, the most interesting developments in the field of economics have come with the new attention paid to moral factors in economic progress. For some generations, so long as traditional Jewish and Christian moral values held sway in the West, such moral factors could operate as silent partners in economic analysis, being everywhere taken for granted. Their current absence has brought to consciousness their earlier unappreciated presence, as economists have rediscovered with a vengeance the moral dimensions of human capital in both cultural and personal contexts.

Two or three decades ago, it was frequently remarked that the systems described as "capitalist" and the systems described as "socialist" were asymmetrical, for socialism named a unitary system in which one set of leaders made all the key economic, political, and moral decisions, while capitalism was the name of an economic system only, capable of being combined with any number of political and moral systems. A man might be willing to die a romantic death defending democracy, but no one is willing to die for an economic system. That would be a confusion of means and ends—and, anyway, there isn't much romantic about capitalism. So it was said.

The truth in the aphorism is that the weakness of socialism lay in its dangerous concentration of power—opening up enormous possibilities for the abuse of power to which many socialist governments succumbed, certainly, but also stripping human capital from private citizens. Pope John Paul II has written that the fatal flaw in socialist anthropology was its atheism, but he had in mind a particular kind of atheism: the atheism that sees man as a flat creature of matter and the will-to-power only, without spirit or soul, and ultimately unfree at his core. Even without theism, many Western classical liberals had an image of human beings as free and self-determining, with all individuals living out a story of weighty moral significance not only for their personal destiny but for the culture as a whole. In short, the ultimate drama in economics is acted out in the arena of human capital.

This humanistic turn in economics, first made by the great Austrian economists of our century, seems to have gone largely unobserved outside of the field of economics, even by humanists. But if economics is not only a science, if it is also a way of looking at reality and a way of thinking (a fact suggested by recent economists' success at borrowing insights and methods from philosophy, law, anthropology, psychology, religion, and even art), then modern economics offers enormous resources for future generations of thinkers—and the possibilities for a new synthesis are immense.

In this light, there seems to be emerging in economics something like a universal science, a science of humans qua humans, in all our variety but also in certain invariant relations to human experience. Every human being on earth is an acting subject, capable of reflection and choice, a spirited animal capable of activities and a range of consciousness no other animal matches, aware of both universal community and unique personal meaning, faced with scarcity and sensing the impulse to inquire, create, trade and barter, and better our condition.

In the twenty-first century, economics has a great deal to teach us, and much of it complementary to the wisdom we have learned down through history. It is the vocation of economics to help us to be better women and men; to make better choices; to see more clearly what our alternatives are, and their comparative costs and advantages; to invest shrewdly in our fellows and in ourselves; and to use our freedom more advantageously and wisely. Economics is a noble vocation. It is also, I am arguing, a humanistic vocation.

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The Supreme Court 1997
A Symposium

To help the reader understand the background of the following commentaries, we asked Robert P. George of Princeton University for a brief summary of the 1996-97 cases related to questions of morality and religion. Herewith his pulling together of the pertinent facts. His own commentary appears later in the symposium.

—The Editors

The first key decision of the Supreme Court's most recent term was *Agostini v. Felton*, handed down June 23, 1997, concerning the proper interpretation and application of the First Amendment's prohibition of laws "respecting an establishment of religion." Since 1947, the Court has held that this "establishment clause" forbids government aid to religion. And so with *Aguilar v. Felton* in 1985, the Court halted a New York City program that sent public school teachers into religiously sponsored private schools to provide congressionally mandated remedial education to disadvantaged children. The effect was to force schools across the nation to locate, at great expense, remedial programs at public schools or in vans parked outside religious schools.

Aguilar became an emblem of the Court's "strict separationist" interpretation of the First Amendment. By 1994, however, a majority of Justices had indicated their willingness to reconsider the ruling, and with *Agostini*, New York revived the case—winning, in a 5-to-4 decision, a reversal of *Aguilar*. The *Agostini* majority did not question the general ban of aid to religion, but they argued, in an opinion by Sandra Day O'Connor, that providing remedial education for parochial students in purely secular subjects does not constitute such aid. O'Connor repudiated *Aguilar*'s presumption that the presence of public employees at parochial schools "inevitably results in the impermissible effect of state-sponsored indoctrination or constitutes a symbolic union between government and religion." O'Connor further rejected the idea, central to *Aguilar*, that an excessive entanglement of church and state arises either from the need to "monitor" public school teachers to ensure that they do not inculcate religion or from the "administrative cooperation" necessary when public school teachers work in a parochial school setting. The four dissenting Justices (David Souter, Ruth Bader Ginsburg, John Paul Stevens, and Stephen Breyer) insisted that *Aguilar* had been rightly decided and that nothing in law or fact had changed to authorize a reconsideration of the case. Though *Agostini* does not decide the further question of the constitutionality of publicly funded vouchers to enable students to attend religiously affiliated schools, it seems to strengthen the case in favor of such programs.

In the second and third key decisions, *Washington v. Glucksberg* and *Vacco v. Quill*, handed down June 26, 1997, the Justices unanimously rejected claims that state laws forbidding assisted suicide violate the Fourteenth Amendment's guarantees of "due process" and "equal protection." Chief Justice William H. Rehnquist, delivering the opinion for the Court in both cases, denied that the Constitution contains a "right to die." Antonin Scalia, Clarence Thomas, and Anthony Kennedy joined the Chief Justice's opinions. O'Connor joined these opinions as well, but filed an additional concurring opinion in each case that Ginsburg and Breyer joined in part. Breyer also filed separate concurring opinions, as did Souter and Stevens.

In *Glucksberg*, the Ninth Circuit Court of Appeals invalidated a Washington State prohibition of assisted suicide. Invoking the "mystery passage" from the 1992 abortion case of *Planned Parenthood v. Casey*—"At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life"—Judge Stephen Reinhardt reasoned that constitutional liberty includes the right of terminally ill persons to have a physician's assistance in ending their lives. Rejecting this view, however, Rehnquist argued that the language from

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Casey had not declared an all-purpose right to do as one pleases but merely described "those personal activities and decisions that this Court has identified as so deeply rooted in our history and traditions, or so fundamental to our concept of constitutionally ordered liberty, that they are protected by the Fourteenth Amendment." A study of history and tradition, Rehnquist suggested, reveals that suicide, and certainly assisting in suicide, have always been considered legitimate objects of state prohibition. Moreover, the interests asserted in prohibiting assisted suicide—preserving life; maintaining the integrity of the medical profession; protecting the poor, elderly, disabled, and other potential victims of prejudice and abuse; and avoiding the slippery slope to euthanasia—easily meet the basic due process requirement that laws have a "rational basis."

In *Quill*, the Second Circuit Court of Appeals—though explicitly rejecting the "due process" claims on which the Ninth Circuit relied in *Glucksberg*—held that a New York law against assisted suicide violated the Fourteenth Amendment's "equal protection" clause. The Second Circuit claimed that New York lacked a rational basis for, on the one hand, permitting terminally ill patients to demand the removal of life support systems, while, on the other hand, forbidding terminally ill patients to obtain a physician's prescription for lethal drugs. In reversing the Second Circuit, Rehnquist argued that the distinction between committing suicide and removing life support or administering painkilling drugs with the side effect of shortening life is perfectly rational—the latter consistent with the physician's ethical mandate never to kill, while (quoting medical ethicist Leon Kass) a doctor who assists a suicide "must, necessarily and indubitably, intend primarily that the patient be made dead."

Concurring in the result in *Glucksberg* and *Quill*, Justice Stevens stated that the Court's denial of a categorical right to commit suicide does not imply that all state statutes forbidding assisted suicide are constitutional. Noting that Washington's death penalty means that the state's commitment to the sanctity of life "does not require that it always be preserved," Stevens asserted that the state "must acknowledge that there are situations in which an interest in hastening death is legitimate." "Indeed," he added, "not only is that interest sometimes legitimate, I am also convinced that there are times when it is entitled to constitutional protection."

Also concurring in the result, Justice Souter defended "substantive due process," a doctrine that the Supreme Court has invoked in some of its most controversial cases: *Dred Scott v. Sandford* (1857), denying the power of Congress to restrict slavery in federal territories; *Lochner v. New York* (1905), invalidating state limitations on the number of hours industrial laborers could be required or permitted by their employers to work; and *Roe v. Wade* (1973), nullifying the abortion laws of fifty states. Though substantive due process has been severely criticized as a pretext for the judicial usurpation of legislative authority, Souter argued for a "non-absolutist" doctrine that calls for courts to "stay their hands" in circumstances in which legislatures demonstrate the "institutional competence" to handle an "emerging issue" such as assisted suicide. But he held out the possibility of the Court later finding a right to assisted suicide: "While I do not decide for all time that respondents' claim should not be recognized, I acknowledge the legislative institutional competence as the better one to deal with that claim at this time."

The fourth key decision, *City of Boerne v. Flores*, reached June 25, 1997 by a vote of 6-to-3, invalidated the Religious Freedom Restoration Act (RFRA), passed by overwhelming majorities in both houses of Congress in 1993. Certain constitutional standards—standards that governments were required to meet in cases where laws, though religiously neutral and general in their applicability, impinged upon the religious freedom of citizens—had been removed by the Supreme Court in the 1990 *Smith* decision. In response to *Smith*, a broad coalition lobbied the Congress to protect the free exercise of religion, and the result was RFRA's restoration of the requirements that laws adversely affecting religious practice be (1) supported by a "compelling state interest" and (2) employ the "least restrictive means" of achieving that interest.

The *Boerne* case arose when St. Peter's Catholic Church in Boerne, Texas, was denied a construction permit on the grounds that the church is subject to the City's Historic Landmark Commission. In response to the church's lawsuit under RFRA, the city asserted that RFRA was an unconstitutional imposition upon legitimate state and local authority.

Invoking its power under Section 5 of the Fourteenth Amendment "to enforce, by appropriate legislation" that Amendment's substantive guarantees of due process, Congress sought with RFRA to restore the broader protections for religious freedom that the Court had abandoned in *Smith*. Writing for the majority in *Boerne*, Justice Kennedy argued that Section 5 enforcement power is merely "remedial"—Congress not being given the power to decide what substantive rights people have under the Fourteenth Amendment or what actual restrictions that Amendment places on the states. Its authority limited to enacting laws to remedy constitutional violations where the courts have determined they exist, Congress may not, under its own understanding of free exercise, require the states to meet a compelling interest standard before passing laws of general applicability that may burden religious practice.

In a concurring opinion, Justice Scalia, the author of *Smith*, defended his claim that the framers and rati-

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fiers of the First Amendment did not intend to create "conduct exemptions" for religious believers. Justice Stevens, who joined Scalia's concurrence, also filed a separate concurring opinion (in which no other Justice joined) making the claim that RFRA was unconstitutional as a violation of the First Amendment's prohibition of laws respecting an "establishment of religion."

Justice O'Connor, the Court's leading critic of the *Smith* case, dissented in *Boerne* on the ground that the majority's use of *Smith* "as a yardstick for measuring the constitutionality of RFRA" was misguided, since *Smith* itself should be reconsidered. On the central question at issue in *Boerne*, however, she expressed agreement with the majority's claim that Congress' enforcement authority is remedial rather than substantive. "If I agreed with the Court's standard in *Smith*," she wrote, "I would join the opinion." This left only Justices Breyer and Souter open to the possibility that congressional power under Section 5 is more than merely remedial. And neither actually asserted substantive congressional power or made an effort to rebut Kennedy's argument against such power. They argued merely that *Smith* should have been reconsidered and the question of Congress' power under Section 5 put off to another day.

Hadley Arkes

In Henry James' novel *The Bostonians*, a formidable woman and physician named Dr. Prance pokes her head through a door to take in a meeting of feminists. And a moment later, having gauged the depth of what she was likely to learn, she decorously takes her leave. As the narrator remarks, she evidently had "as many rights as she had time for." Justice Sandra Day O'Connor seemed to display a comparable sense of detachment during oral argument over the "right to die." And when the Court finally came to a judgment, Justice O'Connor apparently decided that she and her colleagues had as many rights as they had time to articulate, refine, and protect.

Even judges who began with a certain openness to a right to die soon discovered the range of pitfalls that would attend any right defined in such an abstract and sweeping way. In one of his episodic moments of lucidity, Justice John Paul Stevens recognized that the liberty protected in due process "does not include a categorical 'right to commit suicide which itself includes a right to assistance in doing so.'" After all, if there is a right to have the assistance of others in suicide, the moral logic would entail the further right to compel the assistance of others, even when they are unwilling. And once it is established that it would indeed be justified to hasten the death of certain patients, why should other patients (say, those in a coma) be deprived of this good because they are too impaired to make their preferences known? This logic plausibly accounts for the fact that in the Netherlands a policy of "voluntary euthanasia" managed to produce, in 1990, about a thousand cases of doctors hastening the death of patients even without an explicit request.

That deeply interesting fact seemed to leave a lasting impression on the minds of the judges. And so too did the concern that the right to die would pose special dangers to the vulnerable: the poor, who might be taking up resources beyond those covered by insurance, private or public; or the elderly, who might be subtly pressured to curtail the burdens they create for their families. Putting all these considerations together, the judges seemed more aware than before of the hazards of a judgment far too sweeping. At the same time, they were also aware that none of the litigants seeking a right to die had been deprived of death: As the case had wound its way through the courts, all of the litigants near death had now died. Nor did it appear that the patients had been compelled to die in pain, or that they had been deprived of their freedom to reject any treatment they found repellent. If there was any right, then, left to be declared, it would have to depend on circumstances so rare that they had not shown up yet in any case. And in the absence of that case, the judges were reluctant to pronounce new, sweeping rights. As Justice O'Connor observed, there is "a need to strike the proper balance between the interests of the terminally ill, mentally competent individuals who would seek to end their suffering and the State's interests in protecting those who might seek to end life mistakenly or under pressure." She apparently recognized, with Justice Souter, that legislatures are in a position to strike that balance far more flexibly than courts.

And yet, when judges in the past recognized that they had no principles to pronounce, they usually recognized as well that the case before them belonged in the hands of legislators rather than judges. A unanimous Court in this case decided to leave undisturbed the laws of a state that barred the assisting of suicide. But behind the facade of that unanimous result, Justices O'Connor, Stevens, Souter, and Breyer showed anything but a willingness to let this matter pass from their hands. They clung to the possibility that somewhere, sometime, someone in the United States would find himself prevented by law from exiting life without pain or with the dignity he deserved. And at that moment, they would run to the rescue. Their willingness to strike this posture virtually invited other cases to be brought, and it may also signal their readiness to uphold any law that facilitates a right to die.

And so, while the Court unanimously rejected a "right to assisted suicide," the opinions reveal a judgment far more unstable than appears on the surface. Indeed, they reveal a restless willingness to move instantly in the other direction. The rhetorical play, the inventiveness, the casting about for the right

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metaphor, were all on the side of the judges who were trying to render more plausible or attractive the reasons for hastening death. To the grand fatuity of the famous "mystery passage" in *Casey* Justice Stevens has added what might be called the "Thanks for the Memory" passage: The freedom to reject medical treatment also encompasses, wrote Stevens, the right of a patient to determine "the character of the memories that will survive long after her death."

On the other side, there was no comparable inventiveness or energy devoted to the problem of "unalienable" rights: to the things we could not rightly "alienate" or waive, even in the name of our freedom. As Chief Justice Rehnquist framed the question before the Court, he began where he always begins, "by examining our nation's history, legal traditions, and practices" that give concreteness to our sense of rights and the way in which those rights have been understood. Surely, it makes a difference that laws forbidding suicide and assistance in suicide are no innovation. The ban on suicide runs back to the common law, and in almost every state, as Rehnquist remarked, the ban on suicide had expressed "the states' commitment to the protection and preservation of all human life." To this ground of the law, he then annexed all those considerations that argue powerfully against any attempt to create subtle exceptions. A right to assisted suicide would be hard to confine. It could not be clearly restricted to the terminally ill, since doctors are often widely mistaken in estimating how many months their patients have left. And besides, why should any right to hasten death be confined to the terminally ill? Why should it not be accorded to *any* patient with a strong desire to have it? In the face of these possibilities, Rehnquist and his colleagues recognized as well the interest of the State in protecting the integrity of the medical profession—in assuring that doctors will not be converted into killers.

All of these arguments could have built with a powerful, cumulative force, but that force was suddenly dissipated in a stroke when the Chief Justice simply stopped compiling the list and remarked that "we need not weigh exactingly the relative strength of these various interests." And there was the heart of the matter. These were not principles that commanded our judgment, nor were they even compelling interests. They were plausible interests that may be invoked by a state—and then again, may not be. A state might be quite as free to disregard any of these concerns or interests. A state might decide, with a comparable legitimacy, to recede from "the protection and preservation of all human life" and to ease the path of doctors in aiding the suicide of their patients.

Nearly two hundred years ago, James Wilson, a member of the first Supreme Court, explained that the common law protects human life "not only from immediate destruction, but from every degree of actual violence, and, in some cases, from every degree of danger." It was open to the Court in our own time to explain in the same way why the Constitution offers the most emphatic bias in favor of protecting human life, or why it may cast up inhibitions for a state that sought to lower the protections of life. But that is not how the plurality of conservative judges sought to frame their opinion in this case. They appealed instead to historicism and to the habits of our tribe: There is in the Constitution no right of assisted suicide, because no right of that kind has ever been recognized in the laws or conventions of our people, in any epoch of our experience together as a nation.

In other words, the plurality of justices produced the usual finesse of conservativism: Instead of explaining the principle that commands our respect and entails our judgment, the judges simply pointed out that no such "value judgment" has yet been recognized. But why should it not be recognized now? After all, the same kind of argument was made even more forcefully about abortion. Up to *Roe* in 1973, the tradition of our laws had been directed even more uniformly and unequivocally to the protection of unborn children. And yet, those commitments simply dissolved when confronted with the question of how a Court could deny, right now, the claim of people to the control of their own bodies. When that question is pressed again on the right to die, the conservatives will be compelled to come forth with something more substantive to explain the rightness, and necessity, of protecting human life.

But the current opinions in *Glucksberg* and *Quill* reveal quite dramatically the unwillingness of the conservative judges to offer that kind of argument. Good people, with good reflexes, managed to produce a welcome result. And yet, they revealed at the same time the moral diffidence of what passes these days as "conservative jurisprudence." The Court protected human life without being able to offer a moral account of why that was justified and necessary. And without such an account, these decisions on the right to die may merely mark off, for their adversaries, the path of attack on these judgments, and the ground of their own undoing.

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William Bentley Ball

The religious school decision in *Agostini*, as I see it, comes to this: Government may aid individuals at religious institutions where the individual and not the institution is the primary beneficiary. The aid must provide benefits to a broad class of citizens and be religiously "neutral"—i.e., not be primarily religious in character, create no greater or broader benefits to the recipients at religious institutions, and not

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limit the benefits to persons choosing such institutions. Within these bounds, the states and the Congress should now be free to create—without fear of judicial voidance on Establishment Clause grounds—programs in education (and, by implication, health and welfare) to support their citizens' choice of religious institutions.

Agostini's second great benefit is a purifying of Establishment Clause jurisprudence. We have suffered, since the *Lemon* decision of 1970, judgments of the High Court that were little but figments of imagining minds and inspired by either paranoid fears or calculating bigotry. If a government program supported the teaching of math in religious schools, the Court, without a scrap of evidence to go on, presumed that teachers could not be trusted to steer clear of "establishing" religion by sticking to math and keeping out religion. To protect against their fanaticism, lawlessness, or sheer dumbness, a "comprehensive, discriminating, and continuing surveillance" would be needed. But that, it said, would constitute "excessive entanglement" of church and state—also offending the Establishment Clause. In *Meek v. Pittenger* in 1975, an extensive trial record involving the sworn testimony of nine state employees supplying auxiliary services in Catholic schools flatly contradicted the Court's presumption. The Court paid this evidence no attention. It went on in 1985, in *Grand Rapids School District v. Ball*, to dream up another piece of constitutional nonsense: that kids in religious schools would perceive a violation of the Establishment Clause through the presence of public teachers on their school premises (a "symbolic link" between government and religion).

One especially bad effect of this preference for fantasy over facts has been its downward spread into the lower state and federal courts, to administrative agencies, municipal bodies, and school boards. The ACLU and similar organizations have been able to exploit the fictitious dangers by threats of costly lawsuits, thus causing paralysis of constructive social action. The Court, through Justice O'Connor's incisive opinion, at last dispatches this regime of presumption. It points out that earlier the Court had "disregarded the lack of evidence of any specific incidents of religious indoctrination" in *Lemon, Meek,* and *Ball.* In *Agostini* the Court is also at pains to expose the kookie "symbolic link" idea as an invention "neither sensible nor sound." *Agostini* thus brings us to a welcome new day in church-state relations, providing in place of the old dishonest fictions a rational test to protect both the public interest and religious liberty.

But there can be little rejoicing in the Court's decision voiding the Religious Freedom Restoration Act. It is true that "rights talk," with its emphasis on the Bill of Rights and the Equal Protection Clause of the Fourteenth Amendment, has too often obscured other sources of protection for our freedoms. Among these is the principle of separation of powers—reflecting Montesquieu's view that power is best restrained by counterbalancing power. In *Boerne*, the Court might have invoked the separation principle by simply ruling that, since 1816, it has been generally accepted that the Supreme Court, not the Congress, is the ultimate interpreter of the Constitution—and thus Congress was without power to override the 1990 *Smith* decision of the Court. The Court, in *Boerne*, indeed does say that Congress has not been given "the power to determine what constitutes a constitutional violation." And it properly adds that, while Congress has power to legislate against unconstitutional actions of government, it may exercise that power only where there is a factual record of actions gravely threatening protected rights nationwide. But the Court goes on to argue that "RFRA's legislative record lacks examples of modern instances of generally applicable laws passed because of religious bigotry." This is not only a misreading of RFRA's legislative record, it also ignores laws whose potential effect provably chills religious liberty.

Treating religious liberty with virtual diffidence in contrast to its protection of freedom of speech (for instance, its Internet censorship decision June 26), the Court, in *Boerne*, suggests that a claim of religious liberty should be considered of constitutional significance only if it involves "persecution" due to proven "animus or hostility" to religion. Burdens on religious liberty, however substantial, must be dismissed as "incidental" in all situations in which secular interests are simultaneously burdened. But to say that religious freedom must depend upon proof of "persecution" or of bigoted motivation is obviously to place that freedom on a very shaky basis. Indeed, it is usually the unintended or well-intended consequences of the exercise of the power of the modern regulatory state, through laws silent as to religion and applicable across the board, that most often pose material threats to religious liberty. The most notable feature of our national existence is the eddying of the governmental tide into every aspect of our lives, including education, taxation, health, employment, and, supremely, the moral order—all areas that intersect with religion.

Many conservatives have built careers exposing the evils of that tide, which makes all the more puzzling the penurious view of religious liberty that four conservatives on the Court express in *Boerne* and that some other conservatives widely express. We see a barely restrained annoyance especially over assertions of religious freedom by minority religious groups—and in this appears a unity of mind with secularist liberals.

What is to be done to protect religious freedom in the wake of *Boerne*? Religious resisters to government actions must employ what ingenuity they can to fit their cases within the confining prescriptions of the *Smith* decision. Further attention will need be given to

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enacting statutes specifically protective of religious interests: e.g., Pennsylvania's 1988 law, successfully lobbied by evangelicals and Catholics, establishing independence of religious schools in curriculum and the selection of teachers; or state and federal statutes protecting pro-life hospitals and health care personnel respecting performance of abortions. Resort may also be made to state constitutions—as when the Amish, following an adverse Supreme Court ruling under *Smith*, had their 1995 slow-moving vehicle case upheld by the Minnesota Supreme Court under the "conscience" provision of the Minnesota Constitution, or when fundamentalist schools in Kentucky were saved from extinction by a similar state constitutional provision in 1979. Constitutional amendment will be called for, but amending the Constitution offers as little immediate hope as amending the Court. Most of all, future free exercise advocates will need to move the Court to modify *Smith*.

The major decisions of the Court holding that there is no constitutional right to assisted suicide come as good news. Almost as important as protection of human life is the significance of the Court's shying away from the implications of *Roe v. Wade* and *Casey*. The Ninth Circuit's Judge Stephen Reinhardt, in one of the two assisted suicide cases, had shown with perfect logic that the principles of the abortion decisions demanded recognizing a right to assisted suicide. The Supreme Court, in a dramatic change of course, has now refused to follow such logic that would have it continue, in imperial guise, as lawmaker for the nation. Its decisions in these cases show respect, instead, for the powers, in the words of the Tenth Amendment, "reserved to the states, respectively, or to the people." The Court recognizes that peace on the assisted suicide issue is not assured. The last paragraph of the Court's trenchant opinion in *Glucksberg* encourages debate over the "legality" of physician-assisted suicide. This was a needless dictum and has already been seized upon by Justice Stevens to drive home a call for exceptions to state laws that bar assisted suicide. We can have high hope, however, that if questions such as this are left to the democratic processes, the good will prevail.

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Robert H. Bork

For orthodox constitutionalists, this past term of the Supreme Court was a vast improvement over a year ago. It is still too early for a general celebration, however; some of the Court's best results were reached by narrow margins and such major cultural issues as all-male military colleges and special rights for homosexuals did not come before the Court.

In *Agostini*, the Court overruled a prior decision and allowed public school personnel to go into religious schools to offer remedial courses—though in a well-ordered constitutional world, the prior decision would never have been made. *Agostini* shows the Justices wading through the molasses of the Establishment Clause (which is what the people who have made the molasses deserve) in order, most tortuously, to reach the right result.

The First Amendment forbids the "establishment of religion," which might seem a simple prohibition of favoring one religion over another. But the Court has progressively reworked that clause into a requirement of the "separation of church and state," a phrase that appears nowhere in the Constitution. Banning Christmas displays on public property, forbidding schools from displaying the Ten Commandments, eliminating school prayer, and doing much else that neither the language nor the history of the Constitution commands, the Court for decades has displayed what it would not be too severe to call a hostility to religion, and particularly to the Roman Catholic religion.

The immediate problem, however, was *Lemon*, in which the Court laid down a three-part test nearly impossible for any government relation with religion to pass. The third prong of the test, involved in *Agostini*, was that a "statute must not foster an excessive government entanglement with religion." The severity of that injunction had been shown in *Aguilar*, where it was held an "excessive entanglement" for New York City to send public school teachers into sectarian schools to provide remedial courses for students who needed them. No religious symbols were allowed in the remedial classrooms, the teaching materials were entirely secular, and the teachers involved were not of the same religious persuasion as the school—and that turned out to be the problem. It was the very care that New York City took to prevent the mixing of instruction and religion that the Court held to be the forbidden entanglement.

With *Agostini* the city sought a modification of *Aguilar*'s injunction (on the ground that it was inconsistent with rulings in the interim), and the Supreme Court agreed in an opinion written by Justice Sandra Day O'Connor for five members of the Court. In a short space, it is impossible to give an adequate summary of the complexity of the argument the majority required to reach its sensible conclusion. It is unfortunate that the Court has got itself into a muddle that prevents it from saying simply that aid to education, given equally to public and private schools, and where the aid is not used for religious indoctrination, does not violate the Establishment Clause. Because the decision is so bound to the facts of New York City's program, however, it would be overly optimistic to predict any general reworking of the law in this area. The good news is, therefore, quite limited.

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The bad news is that four members of the Court dissented. Justice Souter's dissenting opinion displayed all of the hostility to religion that has been so marked on the Court for years, holding that New York City's program had the impermissible effect of promoting religion in three ways: by state-paid teachers "inadvertently (or intentionally)" manifesting "sympathy with the [school's] sectarian aims," by producing "a symbolic union of church and state," and by subsidizing "the religious functions of the religious schools by assuming responsibility for teaching secular subjects the schools would otherwise be required to provide."

Justice Souter went on to say that the program not only produced an excessive entanglement between state and religion, but involved the state in the forbidden subsidizing of religion and acting in a way that could reasonably be viewed as religious endorsement. It is not necessary here to track every one of Justice Souter's fears. Suffice it to say that in a number of ways—the hiring of chaplains for each House of Congress, congressional calls upon the president for Thanksgiving Day proclamations in the name of God, etc.—the early practice under the First Amendment shows that today's rigid separation between church and state has no support in the history of the Establishment Clause.

The complementary clause guaranteeing the free exercise of religion was involved in the *Boerne* decision, which struck down the Religious Freedom Restoration Act. Conservatives tend to view this as judicial usurpation, but the decision is nonetheless mildly heartwarming. Though it follows from an earlier decision (itself probably wrong), it properly rejects Congress' effort to correct that decision by statute.

In *Smith* (the peyote case), the Court confronted a free exercise challenge to a state law of general applicability that made criminal the use of peyote. The state had denied unemployment benefits to Indians, who having lost their jobs for using drugs, claimed that taking peyote was part of their religious ceremony. A majority of the Court responded that the law would be unconstitutional if aimed at religion, but it passed free exercise muster as a law of general application. In reaching this result, the Court jettisoned the old rule that a law could deny free exercise if, though one of general application, it placed an undue burden on religion. *Smith* seems to me a highly dubious constitutional ruling, but while it stands it is the law of the Constitution.

Religious people responded with alarm and anger. The decision seemed to say, for example, that a law against underage drinking could make criminal a sixteen-year-old's sip of communion wine. Visions of the youth and the priest being hauled off to jail were freely entertained. Congress responded by enacting RFRA, which prohibits government from "substantially" burdening the exercise of religion (even if the burden is imposed by a law of general applicability) unless the burden furthers a compelling government interest and is the least restrictive means of furthering that interest.

When the Catholic Archbishop of San Antonio was denied a building permit to enlarge a church, he appealed under RFRA, and the Supreme Court held that the power to "enforce" the guarantees of the Fourteenth Amendment was the power to provide remedies for violations defined by the courts, not the power to define the constitutional guarantees themselves. This seems correct. The word "enforce" means to provide civil and criminal penalties or to issue injunctions. It is a singularly ill-chosen word for a power to rewrite this aspect of the Constitution.

While orthodox constitutionalists may disagree with the *Smith* case itself, they should agree, and be thankful for, the ruling that the Fourteenth Amendment's Section 5 is not a power lodged in Congress to change the Constitution as interpreted by the Court. The rule that the Constitution may not be altered by statute remains intact. There may be a case for such a power, but it should be accomplished by constitutional amendment rather than by a misreading of the existing Constitution.

All in all, the religion clauses came out not too badly in this term of the Court, though it is far too soon to announce a reformation of the deformed jurisprudence of those clauses. Ironically, the important ruling had little to do with religion and concerned mainly the scope of the Fourteenth Amendment.

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Jean Bethke Elshtain

When the *Agostini* decision was announced, the *Washington Post* led off with the provocative headline, "Church-State Divide Narrowed." We were told that "a narrowly divided Court" was "keeping with its recent trend," the conservative majority "lowering the wall" between church and state. There were enthusiastic pronouncements from those favoring vouchers and dark forebodings voiced by "strict separationists." This was on a Tuesday. Came Thursday and the whole world changed. Many of the same folks ecstatic two days earlier about the Court's change of direction now expressed dark fears about a potential nightmare of repression given the 6-3 decision to strike down the 1993 Religious Freedom Restoration Act.

More high drama came when the Court unanimously upheld state laws prohibiting assisted suicide. This is a matter of dire import for all who hold that licensing physicians to kill is not among the chief lines of defense of our commitment to human dignity. The

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New York Times offered as its bold sub-head line: "No Help for the Dying," and, to judge from the press, we raced through the collapse of church-state separation, disastrous loss of religious freedom, and heartless anti-choice disregard for the suffering of the dying—all in a matter of days. My hunch is that none of these perfervid interpretations is warranted. Congress is free to recast the Religious Freedom Restoration Act, perhaps finding ways to limit the abuse of the thousands of nuisance suits RFRA has inspired (particularly among prisoners seeking free exercise of, among other faiths, Satanism and Nazism). The *Agostini* case is a victory for the common sense that had been abandoned with *Aguilar*. And the assisted suicide decisions dodged a bullet, though the Court did leave the door open to revisiting the matter.

I don't know how this would shape up on a score card. But I am struck by just how extraordinary the power of the Supreme Court really is and how far its reach extends. Some of the decisions leading up to *Agostini* quite literally boggle the mind, in part because they came before the Court in the first place. What on earth is going on here? Bear in mind that not all the strange stuff emanates from the highest Court. State courts have waded into some pretty strange waters. The 1986 *Witters v. Washington* case found the Court unanimously rejecting an argument by Washington State that simply allowing a ministerial student to receive aid under a program assisting the handicapped violated church-state separation. The Court felt compelled to step in again, in *Zobrest v. Catalina Foothills School District*, ruling that government could provide a sign-language interpreter for a deaf parochial school student without egregious church-state comingling. Who brings such preposterous cases? Why do they get so far?

In criticizing what the Court is up to, it is important not to cast a halo around popular sovereignty, not to claim that the "voice of the people is the voice of God." I agree with those who argue that the Court has taken on board too many questions (*Roe v. Wade* being the most stunning and disturbing case in point) that it is ill-equipped to handle well and that should be left to our messy democratic processes. But in offering such criticism one does well to remember that "the people" are quite as capable of folly as any court and that we need the checks and balance afforded by the Supreme Court. So it is a pity—terrible for our democracy—when the Court in its hubris falls into discredit. The Supreme Court at present, it seems clear, is trying to step back from its Olympian self-regard and we should all be grateful: at least one hand should be clapping.

This latest round of cases and the fact that the media could discuss them only in terms of church versus state is a sign of the impoverishment of our political discourse. As Cardinal Bernardin reminded us in his last major address before his death, the church-state relationship is "narrow, juridical, and institutional in character" and it doesn't even come close to covering the vast world of connections between religion and politics. It was a terrible mistake to carry the logic of church-state separation over into civil society, for, in Bernardin's words, "to endorse a properly secular state, which has no established ties to any religious institution, does not imply or mean that we should support a secularized society, one in which religion is reduced to a purely private role." Religion and politics cannot be convincingly separated, and were such separation to be effected, "we would be a poorer culture and society."

The force of decisions in the Court's recent past—those leading up to the flurry of cases handed down in June—was precisely to push for a church-society separation under a radically expanded and constitutionally unwarranted church-state doctrine. Non-establishment grew; free exercise shrank. Despite its ruling against the Religious Freedom Restoration Act, the Court seems prepared to work toward a more balanced relationship between nonestablishment and free exercise.

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Robert P. George

By votes of 9-0 in *Glucksberg* and *Quill* the Supreme Court rejected claims to a constitutional right to assisted suicide. Commenting on these decisions in the *New York Times*, Jeffrey Rosen, legal affairs editor of *The New Republic* and one of our nation's most astute commentators on judicial politics, argued that the conservative assault on liberal judicial activism has finally won the day. Legislators, not judges, should decide controversial questions of social policy. The judges have thrown in the towel. The era of judicial tyranny, like that of "big government," is over. So it's time for opponents of the judicial usurpation of politics to break out the champagne, right?

Wrong.

The devil, as usual, is hiding in the details. True, Chief Justice Rehnquist, in opinions joined by Justices Scalia, Kennedy, Thomas, and (somewhat unsteadily) O'Connor, did a fine job of identifying the "state interests" justifying laws prohibiting assisting in suicide. Moreover, Rehnquist's opinion in the *Quill* case elegantly demolished attempts by proponents of assisted suicide and euthanasia—including a group of notable academic philosophers who offered the Justices guidance in a highly publicized *amicus curiae* brief—to equate suicide or assisting in suicide with the refusal or removal of life-support systems.

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Even the Rehnquist opinions, however, contained disappointing features. Chief among these was the failure to repudiate the infamous "mystery passage" from the 1992 decision in *Casey*, which established "lifestyle liberalism" as a sort of state religion to be enforced by federal judges. The Justices' failure in the assisted suicide cases to expel the mystery passage from our constitutional law leaves the Court's ruling in the *Glucksberg* case intellectually insecure. Judge Reinhardt, in his opinion for the Ninth Circuit, invoked the passage (and, more generally, the *Casey* analysis of "abortion rights" of which it was the linchpin) in striking down Washington's prohibition of assisting in suicide. Although Reinhardt's opinion had many flaws, his claim that the logic of *Casey* was "highly instructive," and, indeed, "almost prescriptive" for identifying a powerful "liberty interest" in the "choice to commit suicide," was far from implausible. That claim is not refuted, in fact it is scarcely engaged, by Rehnquist's explanation of the mystery passage as a mere "description" of the Court's previous discoveries of personal autonomy rights in the Fourteenth Amendment. After all, the mystery passage was offered in *Casey* itself not as a *description* of anything, but as a *justification* for the Court's invention of a constitutional right to abortion in *Roe v. Wade*.

By treating the language from *Casey* as a (more or less adequate) description of previous rulings, rather than as a (truly lousy) justification for those rulings, Rehnquist leaves the mystery passage in the condition of a vampire in its coffin—inactive in the light of day yet capable of rising in the night to do untold mischief. If, in a few years, a Court filled with liberal appointees revisits the question of assisted suicide (or embarks on some new constitutional adventure, such as striking down laws forbidding the cloning of human beings), you can bet that the Justices will base their newly discovered rights on the discovery in *Casey*—by Reagan appointees O'Connor and Kennedy and Bush appointee Souter—of the constitutional right of autonomous individuals to manufacture their own moral universe.

No doubt Rehnquist is aware of all this and would gladly have driven a stake through the heart of the mystery passage had the matter simply been up to him. The difficulty he faced, one suspects, is that he did not wish to alienate O'Connor and Kennedy, whose votes were required to form a majority for his opinion. So the Chief Justice did the best he could to get them on record in an opinion which interpreted that passage as narrowly as possible. Still, the failure of the Court (and, indeed, any of the individual Justices) to repudiate the mystery passage constitutes something worse than a missed opportunity.

Now for the really bad news. The unanimous votes in *Glucksberg* and *Quill* mask a division of opinion among the Justices that could easily result in the overruling of these cases within a few years. Four of the most liberal Justices—Stevens, Souter, Ginsburg, and Breyer—declined to join Rehnquist's opinions for the Court. It is hardly a stretch to suppose that some, if not all, of these Justices declined to manufacture a constitutional "right to die" not out of conviction that it would be an abuse of judicial authority for them to invent such a right, but merely because they perceived that the prevailing circumstances are not propitious for a bold new act of judicial imperialism.

Indeed, a careful reading of the concurring opinions reveals that at least two, and possibly all four, of the liberal Justices joined the decision on merely prudential grounds. This means that the replacement of a single conservative or moderate Justice by a liberal appointee could result in a 5-4 decision reversing *Glucksberg* and *Quill* and creating a right to assisted suicide.

Ruth Bader Ginsburg joined in the judgments with the single sentence: "I concur in the Court's judgments in these cases substantially for the reasons stated by Justice O'Connor in her concurring opinion." But O'Connor's reasons are themselves less than clear. She explains that she joined the Chief Justice's opinion for the Court because she agrees that there is no "generalized" right to commit suicide. Might she be willing to find more limited constitutional rights to suicide and assistance in suicide for specific persons or classes of persons in particular circumstances? The parties challenging the state prohibitions of assisting in suicide *thought* that they were placing before the Court precisely the question whether "mentally competent individuals who were terminally ill and suffering great physical and/or emotional pain" had a right to "control the circumstances of their deaths." Remarkably, however, O'Connor saw "no need to reach that question." The best explanation for this, I think, is that O'Connor, while providing the crucial fifth vote for the Rehnquist opinion, employed the time-tested device of a concurring opinion to give herself and members of a future Court wriggle room to invent a "right to die" at some later date. And Justice Ginsburg seems to find that little arrangement perfectly congenial.

Justice Ginsburg's fellow Clinton appointee, Stephen Breyer, also announced his substantial agreement with O'Connor. His own opinion opens by declaring that O'Connor's opinion has "greater legal significance than the Court's opinion suggests." Disagreeing with Rehnquist's characterization of the right being claimed as "a right to commit suicide with another's assistance," Breyer would consider "a different formulation, for which our legal tradition may provide greater support"—one that would "use words roughly like a 'right to die with dignity.'" "I do not believe," he adds, "that this Court need or now should decide whether or not such a right is 'fundamental.'" More wriggle room.

John Paul Stevens went still further, writing an opinion concurring in the judgment that was, for all

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intents and purposes, a dissent. Indeed, he expressed the conviction that there are times when the "interest in hastening death" is not only "legitimate," but "entitled to constitutional protection." It is hard to read Stevens' opinion as anything other than a promise to vote for a right to die should the issue come before the Court again.

The same is true, I think, in the case of David Souter. On its face, Souter's opinion seems chiefly concerned to protect the doctrine of "substantive due process" from erosion, arguing that the Justices' decision not to create a right to assisted suicide should not be construed as a waiver of their authority to create lifestyle or "autonomy" rights—including a right to assisted suicide—in the future. As to why the Court shouldn't do it now, Souter notes that scholars disagree as to whether, for example, the regime of assisted suicide in the Netherlands has degenerated into the nightmare of "non-voluntary" euthanasia. (The truth, of course, is that honest and informed scholars agree that it has degenerated into precisely that nightmare. But never mind.) Given the complicated and uncertain practical and sociological questions, Souter reasons that states should be left free *for now* to "experiment" with prohibitions of assisted suicide (as in New York, Washington, and most other states) or its permission (as in Oregon). After a proper period of democratic experimentation, Souter suggests, the Court can decide whether it is satisfied with the way state legislators have handled the question, and, if not, revisit the question of a constitutional right to assisted suicide.

One might innocently suppose that the Constitution either contains a right to (or against) assisted suicide, in which case the Justices should announce the discovery of such a right, or it does not, in which case they should simply leave the matter to the political process. But in the mind of liberal judicial activists, things are never quite that simple. *For now*, according to Justice Souter, legislatures are institutionally more competent than courts to decide whether to install a regime of assisted suicide. "The Court should, accordingly, stay its hand to allow reasonable legislative consideration." Still, he pointedly reserves the right of the judiciary to step in at some point in the future if legislatures fail to do (or do quickly enough) what the Justices consider to be the right thing: "I do not decide for all time that respondent's claim [to a right of assisted suicide] should not be recognized."

Defenders of self-government—not to mention the sanctity of human life—should certainly cheer the results in *Glucksberg* and *Quill*. *For now*, the people retain their power to protect human life. The vampire is in its coffin. We should not, however, join Jeffrey Rosen and others in proclaiming the demise of liberal judicial imperialism. The judges have *not* "gotten the message." The battle against the judicial usurpation of democratic political authority is far from over. Indeed, it has barely begun.

Our "robed masters" will not reliably restrain themselves until they meet firm resistance from the people and their elected representatives and executive officers. *For now*, the Court's liberals will bide their time, satisfying themselves with the project of shoring up their many past victories. In this cause, they will sometimes have O'Connor, sometimes Kennedy, and sometimes both, to assist them. If one of these Justices, or one of the conservatives, dies or retires, and is replaced by a liberal, well, keep your doors and windows locked, and a cross close at hand.

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Mary Ann Glendon

In this term's pair of decisions involving religion, we see the Justices slogging once again through the interpretive morass created fifty years ago when mischievous litigation found a receptive audience among a Court majority that was at best indifferent to the deepest concerns of religious Americans. Given the tangled state of religion jurisprudence, and the divisions among the current Justices, the Court made impressive strides toward common sense in *Agostini*. Even *Boerne*, as one of a group of recent cases limiting federal power, may conceivably improve the chances for religious Americans to have an effective say in setting the conditions under which they live, work, and raise their children.

In the background of both these cases were lawsuits that reflect poorly on the state of our civil society. The litigation in both *Aguilar* (1985) and *Smith* (1990) was driven by an attitude that is wreaking havoc with the American democratic experiment—the insistence that one's favorite parts of the Bill of Rights, in their broadest possible interpretations, should trump all competing rights and constitutional values such as federalism and the separation of powers.

The hue and cry raised by militant separationists over *Agostini* is a good example of the slash-and-burn attitude that makes ideologically driven litigation so destructive. In the years following *Aguilar*, New York City spent $100 million on classes in vans—money that should have been applied directly to remedial services for impoverished, special-needs children. Justice O'Connor's cautious overruling of *Aguilar* tells us little more than that the prior decision went too far when it extended the establishment ban to a situation involving so little connection between religion and public authority. But in the view of groups like Americans United for Separation of Church and State, no children's plight is severe enough, no public expenditure too wasteful, to justify the slightest chink in the

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wall they worship with all the fervor of a cargo cult.

The decision in *Boerne* was felt as a harsh blow by many supporters of religious free exercise who resent, with good reason, the low priority the Supreme Court has accorded their preferred right since it decided in the 1940s to make the First Amendment's religion language binding on the states. The series of events that led up to *Boerne*, however, involved another regrettable instance of legal overreaching. Like the suit by six "taxpayers" attacking New York's services to special-needs children in *Aguilar*, the so-called "peyote" case that gave rise to the *Smith* decision was an example of rights litigation run wild. The allegedly religious exercise in the case was the use of peyote by two drug counsellors as guests at a Native American ceremony. Both men, having agreed not to use drugs as a condition of their employment, were sacked for violating work rules, and denied unemployment compensation—just like any other employees who lose their jobs because of misconduct. It would have been as wacky for the Court to require compensation on free exercise grounds in *Smith* as it was to stretch establishment language to the breaking point in *Aguilar*.

What prompted Congress to respond to *Smith* by enacting RFRA, of course, was not the sensible narrow holding in the peyote case, but the majority's abandonment of the "compelling interest" test for determining whether governmental action unduly burdens religious exercise. But the real problem with the jurisprudence involving the free exercise of religion is that the Court—even back when it was still paying lip service to the compelling interest test—rarely saw a governmental interest it didn't find compelling when religious freedom was on the other side. The Court's relative indifference to religious freedom has long grieved religious Americans, and *Smith* seemed to add insult to injury. That problem will not be solved until the Court recognizes, as the Founders did, that religion is a positive good, protected as such by the Constitution. What the American people, through their elected representatives, were trying to tell the Court in RFRA, however inartfully, was: Stop giving short shrift to religious freedom.

Though RFRA was struck down, that message may have gotten through. RFRA was, after all, an enormously popular piece of legislation with strong bipartisan support and presidential backing. It is not at all clear that *Boerne* simply brings us back to where we seemed to be right after *Smith*. A Court majority may well, in time-honored fashion, decline to extend that case beyond its narrowest holding. And lawyers for churches like St. Peter's in *Boerne* may still be able to turn the much criticized *Smith* decision to advantage. This type of case, after all, involves not only First Amendment religious freedom, but Fifth Amendment property rights. A little-noticed, but promising, idea in *Smith* is Justice Scalia's observation that a heightened degree of constitutional protection is appropriate in "hybrid" situations where the activity in question is protected by two or more provisions of the Constitution. That sounds a good deal like a compelling-interest test for such cases.

Boerne itself may have a silver lining. It is one of a group of recent cases, including the assisted suicide and gun control decisions, in which the Court has reaffirmed our nation's constitutional commitment to decentralized democracy. This apparent judicial reawakening to the fact that our Constitution is not only a charter of rights but a design for government should be good news for friends of religious freedom—provided we are willing to engage in the active citizenship that the Founders invited and expected. Many Americans gave up on ordinary politics when decision-making power became concentrated in courts and the administrative agencies of the central government. But if the Court really means to respect the powers reserved to the states and the people, a springtime for grassroots political activity may be at hand. And if a majority of the Justices are willing to recognize that the Constitution limits not only Congress' power, but their own, we could be on the verge of a major transition in constitutional law—away from the judicially sanctioned oligarchical tendencies of the past thirty years toward a revitalization of the democratic elements in our republican form of government.

The nine men and women on today's Court are wandering in a museum of error created in the 1940s when their predecessors, in a series of shoddy opinions, made the establishment ban binding upon the states. Justices Hugo Black and Felix Frankfurter led a majority of their colleagues in setting the establishment and free exercise "clauses" in opposition to one another by interpreting the establishment ban broadly and free exercise narrowly—in a sort of pincer attack on what the Founders considered the first of freedoms. Several opinions from this era, such as *Everson* and *McCollum*, rank among the Supreme Court's worst—with their skimpy reasoning, ill-disguised hostility to religion (especially to religious organizations), and their contempt for political solutions reached through interfaith cooperation. The underlying thrust of those decisions was to privatize religion and to eradicate it from public life.

In that connection, it should be noted that a great defect of RFRA was its explicit acceptance of the artificial split between establishment and free exercise. Did RFRA's proponents think that decisions such as *Everson* were any less outrageous than *Smith*? Is the religious freedom of Americans any less in danger when their churches are attacked than when their individual practices are discouraged? The enemies of religion don't think so. That's why many of their advocacy groups got behind the peyote users while implacably opposing aid to students and parents who wish to escape the proselytizing secularism of the government schools. Weren't RFRA supporters suspi-

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cious when so many groups traditionally hostile to what they call "organized" religion jumped on the RFRA bandwagon?

The exit from the maze fashioned by Justices Black and Frankfurter, with later assistance from Justices William O. Douglas and William J. Brennan, will not be found until the Court takes a fresh look at the constitutional text. Father Richard John Neuhaus has given lawyers a push in the right direction by pointing out that the First Amendment speaks of religion in what grammarians call a simple sentence—one with no "clauses" at all. Abundant scholarship makes it clear that the nonestablishment and free exercise provisions were meant to work together in support of a single value: religious freedom. The framers considered religion to be a great public good, to be protected in its associational and institutional, as well as individual, dimensions. The great majority of the American people today believe the same. It is that understanding that was routed earlier this century by the U.S. Supreme Court. It is that understanding that can resolve the interpretive chaos that has characterized the Court's religion decisions for half a century.

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Russell Hittinger

This year's Court term would seem to contrast markedly with the previous term. Last year, federal courts scolded the states for being homophobic *(Romer)*, or sexist *(VMI)*, or racist (Proposition 209); this year the states not only are credited with reasonable judgment (*Glucksberg* and *Quill*), but are deemed to have powers that must be protected against Congress (*Printz* and *Boerne*).

Yet while the results this term might seem encouraging, it is far from clear that the majority of the Court is committed to correcting long-standing abuses of judicial power. Indeed, the central and most chronic problem is unaffected, and perhaps augmented, by these decisions: When it comes to fundamental rights, the Court still claims for itself a plenary authority and tolerates no other voice in this constitutional conversation.

Before pointing out the darker sides of these decisions, let us give credit where it is due in the most publicized cases, *Glucksberg* and *Quill*.

It is one thing to get the right result and quite another thing to get good reasoning supporting that result, but in the suicide cases Chief Justice Rehnquist delivers both. His majority opinions present the relevant philosophical and moral distinctions with unusual accuracy, while he gives a splendid account of the distinction between withdrawing treatment and intending the death of a patient—a distinction often bungled or misrepresented in previous decisions both by the Supreme Court and the lower courts. When this issue is litigated in future cases, lawyers will have Rehnquist to thank for putting the right distinction into the record.

He also makes an honest, though not entirely convincing, effort to contain the mother of all rights—the prodigious *Casey* right "to define one's own concept of existence, of meaning, of the universe." Judge Stephen Reinhardt had reasoned that the right to define one's own concept of existence must be broad enough to include a right to die if it includes a right to kill. Rehnquist, however, insists that the *Casey* right ought to be read as a descriptive summary of liberties protected in previous decisions, and not construed as a new normative prescription.

Unfortunately, Rehnquist's effort to contain *Casey* is not followed in the five concurring opinions. O'Connor and Breyer both admit that they would reach a different result if a new case brought different facts about the suffering of patients. Stevens defends the autonomy right, and Souter takes pains to defend the jurisprudence of substantive due process undergirding cases from *Griswold* to *Casey*. Indeed, both Stevens and Souter adopt one of the main arguments of Judge Reinhardt in the Ninth Circuit: The *Casey* abortion right is a species of a more generic right to self-definition, dignity, and autonomy; so, by analogy, suffering patients and their physicians are merely claiming a liberty to control the personal and holistic meanings of dying. Despite Rehnquist's valiant effort to mitigate the noxious effects of *Casey*, we are perhaps one case away from the Court discovering a right "not to suffer."

Read only on its surface, the *Boerne* holding would seem to protect the police powers of state governments against congressional meddling. That, however, would be a short-sighted estimation. Let us recall that it was the Supreme Court, not Congress, that "incorporated" the religion clauses against the states. For fifty years, the Court has asserted complete authority over the meaning and scope of that "incorporation." Here, it is hardly necessary to enumerate the bad consequences of that jurisprudence. At the same time, however, the Court took an expansive view of free exercise, which helped to mitigate its expansive reading of nonestablishment.

Proponents of federalism may want to believe that we now get more federalism in exchange for less Court-ordered free exercise. But *Boerne* in fact gives us the worst of two worlds. On the one hand, the Court has relinquished nothing in its jurisprudence holding states to neutrality on religious matters (states have no more authority in this matter than they did before). And on the other hand, the Court constricts its solicitude for free exercise. The result is a phony federalism, for the states are still denied responsibility and authority to promote religion, and yet they are permitted to

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dig their policy elbows deep into the side of religious institutions—so long as they are not obviously hostile. In effect, the Court tells the states that they have no positive authority or responsibility to protect and promote the good of religion, but that they do enjoy a bubble of liberty to enact laws and make policies that damage religious institutions. Is this authentic federalism?

The key issue in *Boerne* is the separation of powers with regard to the Fourteenth Amendment. The three Civil War Amendments contain a clause giving Congress authority to make laws enforcing the terms of the amendments. It is at least ironic that these amendments are interpreted as a plenary grant of authority to the Court itself when the enforcement powers were put there in the first place to prevent the Court from hijacking the amendments. Shortly after the Civil War, Congress lost interest in enforcing the Fourteenth Amendment, but it suddenly changed course in 1993 and enacted RFRA. At least implicitly, Congress used its enforcement clause power to restore to a higher level of protection a right incorporated via the Fourteenth Amendment. Given that it was the Court that incorporated this right against the states, by no stretch of the imagination can it be said that Congress used its enforcement clause power to invent a new, substantive right. Why then does the Court in *Boerne* accuse Congress of usurping authority? The answer is not that Congress invented a new right, but that it sought to remedy what it deemed to be a bad decision by the Supreme Court. In response, the Court says to Congress, keep your hands off the Fourteenth Amendment—until we tell you otherwise.

By so doing, the Court has swatted down perhaps the only remaining power capable of checking abuses of judicial power. State governments have to be satisfied with what scraps of authority fall from the Court's plate. Of course, there are other constitutional means for Congress to check the Court. But the enforcement clause is internal to the Fourteenth Amendment, and once it is interpreted into oblivion, any remaining congressional check will have to be initiated on other terms—indeed, on terms that make it look like Congress is attacking the Fourteenth Amendment, and thus attacking individual rights. The *Boerne* holding allows the Court to act unilaterally and to render important clauses of the Constitution immune from the conversation of other branches and departments of government. By a kind of intellectual jujitsu, Justice Kennedy makes it look as though Congress is defining its own powers when it tries to hold the Court to the Court's own standard in previous cases. The upshot is that while the Court is free to change its case law at will, and thus to make the Constitution a by-product of its shifting opinions, Congress has no power to counteract the arbitrary and sometimes contradictory judicial uses of the Fourteenth Amendment.

Let us not forget that only one year ago, Justice Kennedy asserted in *Romer*, without any appeal to facts, that the citizens of Colorado were guilty of "animus." Now, in *Boerne*, Kennedy scolds the Catholic Church for supplying no factual evidence of religious bigotry. What should we conclude? When it comes to sexual preferences, which are not protected as federal rights, the Court can veto the democratic act of a state without any finding of fact supporting the accusation of prejudice. When it comes to religious liberty, the first right protected by the Bill of Rights, religionists bear the burden of proving that impairment of their religious practice is "motivated by religious bigotry."

The most that can be claimed in favor of the Court's decisions this term is that the polity has a bit of breathing room on the issue of assisted suicide. Rehnquist has provided a few patches of solid ground for the next stage of this argument. But the *Boerne* decision is not good, either with regard to religious liberty or to the Court's chronic tendency to reduce the Constitution to its own voice. Some "conservatives" cheer the idea of Congress being cut down to size. But why should we cheer when the Court permits no other authority to talk back? *Glucksberg* contains the seeds of the next round of judicial activism. *Boerne* removes an important congressional power to moderate that activism.

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Michael W. McConnell

It has never been clear that Supreme Court "enforcement" of the Religion Clauses has helped religious freedom more than it has hurt. After this term, it appears that the Court will do less harm. But even less good.

Even before the Court's virtual abandonment (with *Smith* in 1990) of constitutional protection from nondiscriminatory laws burdening the exercise of religion, the Court rarely decided in favor of religious claimants. It allowed the government to forbid Jewish military officers from wearing yarmulkes, prevent Jehovah's Witness children from distributing religious literature (a form of child labor, the Court said), outlaw the central religious ritual of the Native American Church, revoke tax-exempt status for fundamentalist schools that forbid interracial dating, and force church workers who had taken the equivalent of a vow of poverty to accept the minimum wage—just to mention a few egregious examples. In only a tiny handful of cases did the Court intervene to protect religious freedom from the heavy hand of government.

But that is not the worst of it. In other instances, the

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Court itself created the problem. After World War II, when many states began to overcome their anti-Catholicism and to provide support for nonpublic education, the Supreme Court stepped in to put an end to this outbreak of openmindedness. In a remarkable inversion of constitutional values, the Court held that the First Amendment compels the states to penalize families for the exercise of their right to send children to religiously affiliated schools by denying most forms of educational aid. In the most extreme example, the Court in the 1985 *Aguilar* decision held that it is unconstitutional for public school remedial education specialists to assist educationally and economically disadvantaged schoolchildren on the premises of their religious schools.

In other cases, the Court often held that it was unconstitutional for legislatures to enact laws to accommodate the needs of religious minorities. One state was forbidden to require employers to respect the sabbath needs of their employees, another state was slapped down for providing a moment of silence in which interested schoolchildren could pray, and a third was prevented from subdividing a school district in order to protect a small Jewish sect from the hostility of its neighbors. As often as not, the Establishment Clause of the First Amendment has been used as an excuse to censor or discriminate against religious expression, rather than to protect the right of all Americans, religious as well as nonreligious, to express their convictions. It is as though the courts have seen the First Amendment as protecting society from religion, rather than as protecting religious freedom from the power of the state.

Ironically, the political branches have been far more tolerant and accommodating of minority religious needs than the courts. Political theory may say that legislatures are majoritarian while courts are open to minority rights, but the opposite has been true when the exercise of religion is at stake. When the Court held that Jewish military officers have no right to wear a yarmulke, Congress responded with legislation granting that right. While the Court held that members of the Native American Church have no right to the sacramental use of peyote, Congress and almost half the states have passed laws exempting them from legal proscriptions. When the Court approved construction of logging roads through the holy places of several small California tribes, Congress cut off funds for the roads. And when the Court cut off protection for generally applicable laws, Congress passed the Religious Freedom Restoration Act, which required the courts to enforce free exercise rights under a rigorous "compelling interest" standard.

This is not to say that all Supreme Court decisions involving religion have been wrong. But a person committed to religious freedom might well ask whether, on balance, court intervention has improved upon legislative action.

In June, the Supreme Court delivered some good news and some bad news. The good news is that the Court will stop making things worse. In *Agostini*, the Court reversed the 1985 decision denying remedial assistance to impoverished youngsters attending religious schools, and strongly implied that neutral forms of assistance to all forms of education will be approved in the future. Taken in conjunction with the Court's previous word on the subject (in the University of Virginia case holding that it is unconstitutional for a public university to deny funding to an otherwise eligible student publication solely because of its religious message), the Court seems to be saying that it will no longer require, and in some circumstances will forbid, discrimination against religion in the public sphere. This goes a long way toward reversing the damage that the Court has inflicted by its historically erroneous "strict separationism."

This is especially good news for children of the inner city, whose only hope for serious improvement in educational opportunity lies in breaking the government school monopoly over public funding—a monopoly sustained by Establishment Clause precedents that now seem to be a thing of the past.

The bad news is that the Court has invalidated RFRA's application to state and local government. (RFRA probably still applies to federal action, though the Court did not explicitly say so.) The Court's opinion in *Boerne* was based on the laudable purpose of restoring a proper balance between federal and state power (a balance that should help to preserve freedom, including religious freedom, in the long run), but it disregarded the command of the First Amendment that government action may not "prohibit the exercise of religion." In effect, the Court has held that religious exercise can be given no constitutional protection from state interference unless that interference was deliberate or discriminatory.

The practical effect will be felt immediately, by people of all faiths. It is not unusual for ostensibly neutral laws and regulations to infringe upon religious practice, and not unusual for zealots and bureaucrats to refuse to budge even when an accommodation would be relatively easy or even cost-free. Illinois athletic officials were prepared to ban Orthodox Jewish boys from playing basketball rather than create an exception to a no-hats policy; Washington, D.C., officials tried to shut down a successful breakfast program for the homeless in a church basement not zoned for that purpose; Wisconsin prison officials refused to allow a prison inmate to wear a crucifix; and Michigan public education officials tried to prevent homeschooling. The genius of RFRA was not so much its rigorous legal standard in court, but the fact that it enabled churches and individuals to get a hearing from someone other than the bureaucrat in charge. In the vast majority of cases, a sensible accom-

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modation could then be reached without need for further legal action. Without RFRA, low-level officials have no need to listen to arguments for modification of their rules and regulations.

Fortunately, the RFRA decision is not the end of the road. Congress may pass similar legislation under other souces of authority, state legislatures and state courts are likely to provide protection as a matter of state statutory or constitutional law, and it is not impossible that, in an appropriate case, the Supreme Court may reconsider some of the harsher aspects of its interpretation of the Free Exercise Clause—a course not precluded by the RFRA decision.

But for the most part, without RFRA, religious freedom can expect no help from the courts. The combined message of *Agostini* and *Boerne* is, "You're on your own." When Congress or state and local governments act in a way that respects religious freedom and diversity, the Court is less likely to strike it down under the Establishment Clause. But if they fail to do so, at least at the state and local level, the courts will provide no relief.

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Marc D. Stern

That the *Boerne* decision is a disaster for religious liberty is not much in doubt. Opinion is predictably more divided about *Agostini*, not so much because of its narrow holding permitting public school teachers to offer remedial services on parochial school premises (no religious group opposed that), but because a turgid opinion appears to open the door for partnerships between church and state not seen for a century.

At first glance, these developments are unrelated, one being labelled in the popular press a victory for religion (even though many religious groups are dismayed by increased government subsidies for religion), and the other a defeat. In fact, the decisions have much in common.

The most successful attack on the "wall separating church and state" derives not from any attempt to favor religion over nonreligion but from the Court's effort to equalize the treatment of religion with nonreligion. Beginning with *Widmar v. Vincent* in 1981, the Court has insisted that government treat private religious speech as it treats private secular speech. *Agostini* rests on a parallel idea in the context of government aid. Justice O'Connor could not see an advancement of religion in allowing parochial school students to obtain in-school remedial services on the same basis as public school students receive them.

For people who thought the Court was becoming more sympathetic to religion—and *Agostini* began the last week of the Court's term on that note—the decision later in the week in *Boerne* was difficult to understand. If the Court was moving toward a greater appreciation of the role of religion in American life, why should it twice in a decade refuse to give religion its due by exempting it from burdensome regulations that interfere with its ability to exist in the first place?

One popularly trumpeted answer is that federalism—ending federal judicial oversight of state and local authorities—is an overwhelming theme of the Court's work this term in areas as diverse as habeas corpus, official immunity, the Eleventh Amendment, and more. The decision to invalidate RFRA is perfectly consistent with much else the Court has done recently. A refusal to have federal courts second- guess decisions of the state and local government could also explain *Agostini*, where New York City complained that a rule imposed by the federal judiciary interfered with local decisions made in furtherance of the practical needs of governance.

But while a concern with federalism could explain both *Boerne* and *Agostini*, I think that federalism—like the question of whether religion is winning or losing—obscures a close logical connection between the two decisions. Taken together, the decisions evidence the Court's stripping religion of its special constitutional status. In the Establishment Clause arena, the effect of this change is to permit government to come into closer contact with religion, so long as secular counterparts are treated equally. In the free exercise context, the result is a loss of special protection for religious practice.

There is a price to pay for equality in Establishment Clause cases. That equality has bite, and not always in ways that those who advocate equal treatment for religion can predict, is demonstrated by the hullabaloo created when a school district closed down all student extracurricular clubs functioning under the Equal Access Act, including religious ones, to avoid being forced to recognize a gay students' club. Religious groups that had fought for recognition of equal treatment of religious speech found themselves in the uncomfortable position of criticizing a school board for denying equal access to a gay students' club.

Similarly, the part of *Agostini* that suggests states might take over the entire operation of secular studies in parochial schools also rests on notions of equality. If the government can provide a secular education for public school students, it should be able to provide identical education in parochial schools. The more intensely religious a school is, of course, the less willing it should be to take advantage of this equality-based possibility, since precisely such schools are the least likely to accept a curriculum identical to public schools on abortion, evolution, sex education, and the like.

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On the free exercise front, concern with equal treatment necessarily means less protection for religion. If equality is the constitutional touchstone of the Establishment Clause, it is hard to see why it should not also be so for the Free Exercise Clause, which forms a single grammatical unit with the Establishment Clause. The 1990 *Smith* decision, which denied that religious practices burdened by neutral laws are entitled to special justification, is perfectly consistent with this explanation. And so is this term's *Boerne* decision—most evidently in Justice Stevens' concurrence calling any special treatment of religion an unconstitutional preference for religion. Although no other Justice joined this opinion, it would be a mistake to dismiss his concerns as idiosyncratic, for they are reflected (albeit without reference to the Establishment Clause) in some of the majority's rhetoric.

The idea that a naked preference for religion, even in the form of an accommodation, can be unconstitutional finds further support in an earlier decision invalidating a sales tax exemption for religious publications, and in yet an earlier decision striking a Connecticut statute mandating that businesses open on Sunday excuse workers with religious objections to Sunday work. The concern with equality of religious and nonreligious citizens also explains the hostile judicial treatment of the religious accommodation provisions of employment discrimination laws: Judges are reluctant to depart from the mechanically equal treatment of all workers without regard for their religious beliefs.

Egalitarianism has become a predominant force in American life since World War II, and it now affects religion as well. The grossest forms of anti-Jewish, anti-Catholic, anti-Mormon, and anti-Muslim biases are largely just memories. But as the debate over affirmative action shows, egalitarianism is difficult to square with claims for special treatment. Claims for equal treatment in housing for cohabitating couples typically trump landlord claims for recognition of a religious right not to facilitate out-of-wedlock sex. Courts so holding do not bother to determine (as they should) whether the practices of a few landlords will have any real impact on the availability of housing for cohabitating couples. The unstated premise is that equal treatment trumps special treatment for religion. Equality, not religious liberty, is now the bedrock principle of American society.

The rise of special treatment for religious free exercise arose in tandem with the growth of special (albeit restrictive) treatment of religion for Establishment Clause purposes. In 1963, the Court first applied the compelling-interest test to a free exercise claim. That same year, it banned officially sponsored school prayer and Bible reading.

The *Lemon* test—applied to ban a state from equalizing its expenditures for secular instruction of public and parochial school students—was created in 1971, only months before the Court's decision in *Wisconsin v. Yoder*, allowing Amish children to avoid mandatory high school attendance. In 1983, the Court adopted for the first time the equal subsidy principle in an Establishment Clause case to uphold a tax deduction for parochial school parents—just about the time it began to reject almost every free exercise claim to come before it. During this same period, equality for religious speech emerged as a central theme of the Court's work, a trend that intensified after *Smith* in 1990 imposed a regime of equal treatment of free exercise claims.

It is for me beyond question that the developments in free exercise are inextricably linked to developments in separation of church and state. The common ground is a commitment to equal treatment of religion with secular causes. Those who welcome that development in Establishment Clause cases—while it is not yet complete—ought to be prepared to accept it for Free Exercise Clause ones as well. At the least, they should have foreseen that a linkage between the two was inevitable.

There would be more, not less, religious liberty had the Court continued to treat religion specially, both by restricting government funding of religious enterprises and requiring accommodation of religious practice. People of faith will come to rue the day that those chafing at the restrictions imposed by the Establishment Clause pushed equality front and center in the ongoing debate over the meaning of the Clause.

It is probably wrong to blame lawyers for these developments. The egalitarian turn of church-state law was inevitable both because the impulse is so strong everywhere else in the culture and because, despite some triumphalist claims to the contrary, the hold of religion on Americans is no longer sufficiently strong to sustain preferential treatment for religion. The shift to an egalitarian mode of analysis in religion clause cases is thus cause for far greater concern than whether particular Supreme Court decisions are good or bad for religion.

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Michael M. Uhlmann

Although this term's right-to-die and religious liberty cases involved distinct questions of constitutional rights and interpretation, all four cases are marked by a common theme only tangentially related to their subject matter. That theme, evidenced in other cases this term, arises from the effort to protect the states against overbearing federal legislative or judicial power. To be sure, the Justices did not always agree on why this should be so, but a workable if somewhat

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unstable majority seems to think that the states should have greater discretion in setting their own policy agendas even when substantial federal questions may be implicated.

In the assisted suicide cases, for example, deference to the states seems to be the only common note in the Court's ostensibly unanimous verdict to uphold the New York and Washington State bans. Rehnquist, Scalia, Kennedy, and Thomas would apparently leave the states forever free to affirm or deny a right to die under their own laws. Stevens, O'Connor, Souter, Ginsburg, and Breyer concurred for the time-being only and reserved the right—for varying reasons and with varying degrees of enthusiasm—to declare a federal constitutional right to assisted suicide at some point in the future.

In his plurality opinions, the Chief Justice held that the Fourteenth Amendment afforded no basis to challenge the statutory prohibitions in question, either on due process or equal protection grounds. In reaching this conclusion, he warned that the Due Process Clause is not an invitation for judges to create new constitutional rights from "abstract concepts of personal autonomy." The argument is impeccable as legal history and wise as judicial philosophy. Other than his argument from tradition, however, he gave no reason why "abstract rights of personal autonomy" should *not* be constitutionally cognizable. The argument from tradition did not deter six of his colleagues from embracing autonomy as the jurisprudential ground for abortion rights in *Casey*, and is unlikely to deter at least five of them from extending *Casey*'s rationale to assisted suicide in some future case. Nor did anything the Chief had to say discourage states from establishing a *new* legal tradition. The states are free, in his view, to recognize a right to assisted suicide under reconstituted laws—laws that will emanate precisely from "abstract concepts of personal autonomy."

In short, Rehnquist's opinion was as notable for what it did not say as for what it did. What he did not say, but should have, is that the states may be under a constitutional obligation *not* to permit assisted suicide. By removing criminal sanctions against assisted suicide, government may endanger the lives of many citizens, especially those who are medically compromised or otherwise socially vulnerable. Here is where Rehnquist's positivism—and that, alas, of Scalia—may undermine the traditional constitutional order they wish to preserve. In their understandable desire to halt judicial extremism, they yield more than they should to the discretion of legislative bodies.

This last point was the centerpiece of Justice Souter's concurring opinion, which might just as well have been a dissent. Its principal purpose was to tee-up the next case for the proponents of assisted suicide, and what his opinion lacked will no doubt be supplemented by the law reviews in the months ahead. His was a lengthy lecture on the history of substantive due process, in which he cited the abortion cases, and particularly *Casey*, to justify a constitutional right of bodily integrity. That same right, he pointed out, was logically implied in common law and statutory recognition of the right to refuse treatment. And if, as Rehnquist himself conceded, refusing treatment was a cognizable liberty interest under the Due Process Clause, then it is a question of degree, rather than of principle, whether the courts may extend a right of bodily integrity to certain cases where assistance in dying is requested. Unless the Constitution is to be understood as enshrining legislative supremacy, he added, the courts must necessarily involve themselves in determining whether certain rights are implicit in due process, even if they had not been previously recognized as a formal matter in law.

An argument from tradition isn't much of a reply to this contention, for Souter is arguing that the very tradition invoked by Rehnquist, if properly understood, can be used to justify assistance in dying. Nor will it do much good should state courts and legislatures, in the name of compassion for or the autonomy of dying patients, use the same theory to legitimate the private use of lethal force for those who request such "help." When and if that occurs, the constricted view of due process and judicial power held by Rehnquist and Scalia may come back to haunt them. It will certainly hamper their ability to protect the lives of certain patients against the legally sanctioned lethal compassion of their doctors and relatives.

There is no more mangled body of jurisprudence than the assembled asseverations of the Supreme Court on the relation of religion and politics under the First Amendment. Ever since *Everson*, the Justices have tortured the intent of the Framers, misinterpreted American history, run the nonestablishment and free exercise provisions head-on into one another, and treated religion as a wholly private matter or even some sort of toxic substance. But this judicially constructed secularist constitutional mythology inevitably warred against the customary disposition of the American people to mix religion and politics in ways that are far more complicated than strict separationist theory could ever acknowledge. The Court therefore found it necessary to reformulate its *Everson* rationale more than once, even as it carved out exceptions that threatened to swallow the rule.

This resulting confusion has not escaped the Court's own attention. Prompted by the urgings of Rehnquist, Scalia, and O'Connor, a somewhat hesitant and shaky majority began about ten years ago to separate *Everson* from what might be called its High Church secularism. The latest and most promising consequence of this new approach will be found in O'Connor's *Agostini* decision, which suggested that the states may make room for religious institutions in the public square after all. It remains to be determined how far they will be permitted to go, but there is no question that the Supreme Court is going to permit

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policies that only a short time ago would have been unthinkable. In her artful glossing of recent cases, O'Connor indicates the direction that future precedent might take and all but issues a formal invitation to bring on cases involving educational vouchers. There is no question but that *Agostini* is a large step forward.

The *Boerne* decision must be understood as driven in part by federalism concerns. On the merits of RFRA itself, its proponents would do well to rethink their position. Scalia's opinion in *Smith*, to which the Act responded, no doubt lends itself to mischievous application. In this hyper-regulatory era, all sorts of ostensibly neutral laws of general applicability can have a corrosive effect on free exercise rights. But RFRA relied on an expansive reading of congressional power precisely at the moment when the Court had begun to move against unbounded congressional supremacy under the Commerce Clause. *Smith*'s defects aside, RFRA may have been aimed at the wrong target. As long as Congress felt free under Section 5 of the Fourteenth Amendment to revise a faulty judicial interpretation of the First Amendment, why did it limit itself to free exercise? The reason, of course, is that any broader proposal would never have seen the light of day. But in terms of judicially created constitutional mischief, *Everson* and its progeny have done far more damage to a proper understanding of religion than *Smith* is ever likely to do, and until the *Everson* doctrine is substantially modified, trying to write a rule of decision for free exercise cases may prove to be a risky game.

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If God Is My Elm's Great Roots

If God is my elm's great roots
burrowing deep for water
but, as branches seek sun,
might also want light,
and so slowly begin rooting upward
shouldering loose the path stones
through the garden
laid long ago and meant to stay,
now making my path impossible;
Then
I accept God's judgment
and leave the stones raised
like unsettled grave markers
to remind me that God
may move slowly to undo
all my familiar stepping stones
telling me to start new paths
with nothing more to mark my way
than the trail
of my own faint dewprints
on the grass.

Warren L. Molton

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Liberty, Equality, Fraternity

Jean-Marie Cardinal Lustiger

The writers and filmmakers of science fiction have been bold in depicting what life will be like far into the third millennium. Their efforts frequently result in brilliant, and very profitable, popular entertainments. Millions of people are eager to pay to see their fantasies played out in a make-believe world. Most of this may be relatively innocent entertainment, but it is just that: entertainment.

The fantasies and fatuities of popular entertainment, however, should not deter us from asking very seriously, What will be the shape of the human condition in the twenty-first century and the next millennium? The future is imaginable. As with a space rocket, culture and civilization have a trajectory; their course can be predicted, provided that the trajectory is not altered by external forces. Of course, history is marked by surprises, both positive and negative, but we can also discern the impetus, the direction, of cultural motion, and we can anticipate, at least in part, what the future may hold. Permit me to indulge in such an exercise of anticipation, with specific reference to the difference that Christian faith—by no means an external force!—may make in our common future.

The culture of which we are part is defined by the word "modernity." For our purposes, modernity includes what today is called "postmodernity," which may more accurately be viewed as hyper-modernity. The origins of modernity are commonly traced to the founding of the United States of America and, especially for us in France, to our Revolution of 1789. I hope I will not be accused of chauvinism in suggesting that modernity might be characterized by the three words of the motto of the French Republic: Liberty, Equality, Fraternity. In our Revolution, that triad represented the rejection of the old regime and, for some of the protagonists, the rejection of the substantially Christian culture of the preceding centuries.

In the course of the two centuries since the Revolution, however, it has been more and more widely recognized that liberty, equality, and fraternity are, in fact, among the fruits borne by the biblical and Christian tradition. This is an argument vigorously and repeatedly pressed by Pope John Paul II. In his homily at Le Bourget in June 1980 the Holy Father declared to the French people:

> What wonders the sons and daughters of your nation have done to understand man better, and to express who man really is by proclaiming his inalienable rights. Everyone knows how important the ideas of liberty, equality, and fraternity are in your culture and history. At bottom, these are Christian ideas. I am well aware that those who first put them forward did not have in mind man's covenant with the Eternal Wisdom. Yet they wanted to do something for man.

Contrary to Marxist doctrine, culture—like history itself—is not simply the by-product of productive social forces in their complex interaction. Nor is culture simply an ideological framework, man's projecting from his experience in order to create some cosmic scheme or system of meaning. Remembering man's covenant with Eternal Wisdom is especially urgent at the end of this century in which allegedly scientific and rational ideologies have generated the most hideous atrocities. Of course, those who promoted these ideologies claimed to be serving human needs, and toward that professed end they designed and carried out crimes of unspeakable magnitude, crimes of unprecedented scale in human history. It is not enough to say that these ideologies were carried to unfortunate extremes, or that they contained dan-

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gerous errors. The massive experimental evidence demonstrates that these ideologies were rooted in falsehood.

Culture necessarily has to do with human liberty and responsibility. By our intelligence we construct a representation of the world, and that representation determines the horizon toward which a civilization moves, or by which it is brought to a halt. Thus it is culture that sets the direction for the political, social, and economic future of human societies. Culture is rightly viewed as the motor force of history. Culture is not the uncontrollable consequence of technological or economic developments. We human beings are responsible for the future of civilization, and all theories of a deterministic nature—whether economic, technological, or biological—are but efforts to escape that responsibility. Against all such theories, we must insist that we are answerable for our use of the gift of reason.

This brings us back to liberty, equality, and fraternity. While these three words express the aspirations that characterize modernity, the abuse of these words by those responsible for the unspeakable horrors of this century may lead us to disown the ideals themselves. There is a very real risk that people in the next century may repudiate the generosity that inspired these aspirations, and may draw back from the road they opened to a more promising human future. This would be a great sadness. We can help avoid such an unhappy development by discerning anew, and embracing anew, the Christian origins of the aspirations to liberty, equality, and fraternity. Christians can contribute, indeed can take the lead, in envisioning a more hopeful human future by recognizing that each of these aspirations is a way of formulating the questions asked by man in the face of God's revelation.

Each of our three words has in the course of history suffered grave misadventures. The misadventures of liberty compel us to ask again the question of Psalm 8, "What is man?" The misadventures of equality raise afresh the question that the disciples put to Jesus, "Who is the greatest?" The misadventures of fraternity pose once more the question addressed in the parable of the Good Samaritan, "Who is my neighbor?" As we shall see, pursuing these questions in the context of contemporary culture leads us to the great mysteries of creation, redemption, and glorification.

First, the misadventures of liberty. In the modern context liberty has been understood as the ability of the individual to fulfill his own desires, declaring, "I want to do what I want, if I want, when I want, and how I want." This is liberty construed as license. In this view, the very existence of others may be seen as an intolerable constraint on the freedom of the individual. Liberty expresses itself, indeed liberty exists in, the "transgressive" assertion of will against all limits, all prohibitions, all laws. Such is a dominant understanding of liberty in our time.

In the political sphere, the enemy of liberty is tyranny, and tyranny is as old as human history. The threat of tyranny, in the form of totalitarianism, is today greater than ever. It is a great mistake to think that the threat of totalitarianism has ended with the defeat of the overtly totalitarian regimes of our century. Technological power has gained unheard-of domination over human societies, brutally disrupting and often displacing traditional ways of life. The religions of secularism have taken the place of older beliefs, redefining social relations and giving political leaders the power to mobilize the energies and liberties of citizens who have become units of all-pervasive consumption. These dynamics we can see at work today, and it is more than possible that they will become ever more dominant in the century ahead. Against these forces are posited the words of Jesus, "Render to Caesar the things that are Caesar's, and to God the things that are God's." (Matthew 22:17)

In establishing this sharp differentiation between what is religious and what is political, Christianity does not throw up a wall of separation between different dimensions of human life. On the contrary, it establishes, in the form of a hierarchy, a connection between them and thus suggests their necessary and organic unity. The key truth is that man receives his liberty from God, and is able to live in liberty only through his continuing relationship with God. In this way, the person has within him something that is radically inalienable, something that no other man can control. That something is his dignity as a free person created in the image of God. This liberty can be maintained and exercised only in dependence upon the creative source of human liberty, which is God. Permit me to suggest that, rightly understood, the 1776 American Declaration of Independence from political tyranny, with its reference to "Nature and Nature's God," presupposes this radical dependence on the source of liberty.

This is the understanding of liberty that undermines all tyrannical and totalitarian pretensions. Submission to God does not alienate human liberty, for the source of liberty cannot be the enemy of liberty. On the other hand, and as history bears abundant testimony, liberty as license, liberty as self-will, consumes and destroys itself. In a free and democratic political order, no political leader or party can take God's place. Politicians and parties must humbly serve what man is called to become. Their first duty is to assure that every one is able to decide freely, that every citizen, including the poorest and weakest, has a say in deciding both the ends and means of the common life.

Politics becomes totalitarian when it is declared that politics is the source of human liberty. The spiritual struggle of the Church is not to attack totalitarianism in a way that involves the Church in politics as

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simply one party among others. The Church's task, rather, is to discern and denounce the alienations and seductions that destroy human liberty by severing it from its divine source. In this way, the Church not only defends human liberty and dignity, but she also protects the integrity of politics itself. There can be no authentic politics under totalitarianism, for politics is by its very nature the exercise of deliberation and decision by free persons.

This argument requires the asking of very basic questions: What is man? What is the meaning of liberty? How can we choose what is good, for ourselves and our neighbors? Here we enter the field of ethics. The course of our culture has rekindled the most fundamental question about good and evil. Today it is widely thought that the very notion of law is in a state of crisis. If we ask why this is the case, one crucially important answer is that law is almost unanimously perceived as prohibitive. Man's obscured and listless conscience seems unable to comprehend the true meaning of law. The result is that law is viewed as the enemy of liberty. Some of the pioneers of modernity understood themselves to be resisting the conformism of an ossified social order, but they ended up by confusing liberation with systematic transgression of all order. Thus the Jesus who said, "Keep the commandments" (Matthew 19:17), came to be viewed by many as the enemy of liberty.

In our cultural context, an alternative understanding of liberty meets with resistance. Many fail to understand that God's commandments impose themselves on the human conscience not as arbitrary constraints but in the name of the distinction between good and evil. In history's various declarations of human rights we can readily recognize a secular translation of God's commandments. The law of God is the only sure guarantee of the rights of man, the only absolute warrant for the belief that every person is born free and must remain free. Liberty as license, on the other hand, ends up by destroying itself. My argument, then, is that the divine law is the guarantor of human freedom, the most firm foundation of all laws aimed at protecting liberty.

The importance of pressing this argument is evident today in widespread confusion about human rights. Who can deny that the political, moral, and conceptual foundation of human rights has become very shaky? Cynical power games and raw violence run roughshod over the most solemn agreements. It should come as no surprise that human dignity is violated when it is not understood that the claim that every person is endowed with inalienable rights is an appeal to universal conscience. That claim requires an acknowledgment, at least implicitly, that good and evil must not be confused. The distinction between good and evil is valid everywhere, at all times, across the diversity of cultures and civilizations, and notwithstanding whatever other misunderstandings there may be between people of good will. And so it is that in the field of ethics we cannot answer the question of the meaning of liberty without addressing the question, What is man? The question of liberty is the question of how to bear witness to his dignity as a person created in the image and likeness of God.

That task is never easy, and it is in many ways made more difficult in our cultural context. When we look at our culture today, we see a world caught up in a whirlwind of communications, of electronic memories and conflicting construals of reality, of a confusing profusion of images. Many people are fascinated by this new circumstance, and that is understandable. At the same time, however, it produces new forms of conformism, of unfreedom. This is not what was expected from modernity. The apostles of modernity had convinced nearly everyone that advances in knowledge would bring with it advances in liberty. Such hope was not ungrounded, but it had a condition attached to it. The condition was that knowledge would liberate man's intelligence and teach him to critically distance himself from his senses, his impulses, his instincts. Although critical rationality can itself be perverted, it was and can still be viewed as an agent of human liberation. But we must ask whether today's most striking advances in knowledge are not in the service of the very senses, impulses, and instincts from which knowledge was supposed to free us.

Please do not misunderstand. The way of human liberty is certainly not to disbelieve our senses, since it is through our senses that we acquire knowledge. Nor are we to distrust appearances, since appearances are to be read as the language of reality. My point is that the way of liberty requires that we be critical of our own free choices. Put differently, freedom can only be sustained by free persons who keep their exercise of freedom under critical judgment.

The technological profusion of images, far from liberating, may enslave the human imagination. They subject people to what they wish for. Our senses are provided with an abundance of materials, more than we had ever dreamed of, with the result that our liberty is not enhanced but paralyzed. To use the current phrase, individuals and our culture itself suffer from "overload." This is a form of captivity that must be overcome if we are to be truly free. This does not mean that we simply renounce whatever we find attractive. Rather, the overcoming of this captivity requires that we engage the question of truth. What truth can fulfill the aspirations of human intelligence and make man free?

Jesus said, "The truth will make you free." (John 8:32) At another point he said, "And this is the judgment, that the light has come into the world, and men loved darkness rather than light, because their deeds were evil. For everyone who does evil hates the light,

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and does not come to the light, lest his deeds should be exposed. But he who does what is true comes to the light, that it may be clearly seen that his deeds have been wrought in God." (John 3:19-21)

In the world of high-tech communications, lies are increasingly concealed under the cloak of virtual images that reflect no reality. The question of reality is the question of truth. Jesus said, "I am the truth." (John 14:6) The misadventures of liberty at the end of this millennium call us to listen again to the inquiring words of Psalm 8:

> What is man that thou art mindful of him,
> and the son of man that thou dost care for him?
> Yet thou hast made him little less than God,
> and dost crown him with glory and honor.

God's word is resounding at the crossroads as man ponders a way to the future. His word probes our contradictions and illumines our misadventures, sending us back to creation, back to that first and perfect act of creative liberty by which history began. Liberty cannot be sustained by theories about a primordial big bang. We will not recover our dignity unless we rediscover that sovereign liberty by which our liberty was given and is ceaselessly sustained.

Liberty, equality, fraternity. Political and social equality is one of the most adamant demands of our time. The demand for equality, however, encounters opposition in the notion of liberty. Alexis de Tocqueville viewed the progress toward equality as an irresistible historical trend, and he went so far as to deem this "providential." He proposed an explanation of how this trend would unfold. Each person, he said, had first gained an equal juridical status with the passing of the feudal order. Every individual became legally capable of signing contracts, buying and selling property, and getting married. Closely associated with this, equal political rights were to be granted all. It followed, however belatedly, that women were to be given the right to vote and have a say in common decisions. Finally, in this scenario, the nations of the world would become more productive and wealthy. Gradually, the gap between rich and poor, affluence and poverty, would be closed. Moreover, in this optimistic view, everyone would eventually have access to education, health, and other goods, enabling them to share equally in the cultural treasures of society.

Such a philosophy of history, so prevalent in the nineteenth century, was premised on a kind of religious faith that progress would be forever. However battered by hard experience, that faith is still at the heart of our civilization. This has not been an easy century for uncritical faith in historical progress and the dream of ever-increasing equality. Especially in the economic sphere, the attempt was made to achieve equality by the state's imposition of constraints, as we saw in the regimes of socialist inspiration. History has not dealt kindly with such experiments.

There is another approach to economic equality that is voluntary, humane, and, some would say, impossibly idealistic. St. Paul writes to the Corinthians: "I do not mean that others should be eased and you burdened, but that as a matter of equality your abundance at the present time should supply their want, so that their abundance may supply your want, that there may be equality. As it is written, 'He who gathered much had nothing over, and he who gathered little had no lack.'" (2 Corinthians 8:13-15)

Various communities have, at the microeconomic level, achieved this vision of equality. One thinks, for instance, of monastic communities founded on voluntary poverty, or of the egalitarian socialism practiced by the kibbutzim in the early years of Zionism. Such achievements are as impressive as any utopia come true. But in the larger course of history, economic liberalism—whether called democratic capitalism or the market economy—has decisively won. If there were ever doubts about this, they have been removed by the massive and dramatic failure of the socialist economies.

There are different ways of thinking about economic liberalism. One theoretical foundation for legitimating economic competition is the Darwinian principle of life as struggle. As global wealth grows, it is said that the victory of the fitter and stronger will serve the general interest in the long run, even if it means the elimination of the weaker and has as its result less rather than more equality. Thus the utopian dream of equality falls prey to the doctrine of "Might is Right," a doctrine supposedly rooted in the physical, psychological, and even biological reality not only of the human species but of all living creatures. This doctrine has been with us for a long time. It was set forth by Joseph Arthur de Gobineau in his 1853 *Essay on the Inequality of the Human Races*, and in 1859 received a more comprehensive theoretical development in Charles Darwin's *On the Origin of Species by Means of Natural Selection.*

Another dispute between conflicting ideas has also undermined the ideal of equality in our time. Is equality served by erasing differences between people, or by defiantly asserting them? At first the idea gained ascendancy that, in order to advance equality, differences should be denied, ignored, or declared irrelevant. This strategy of deliberate blindness, however, raised the suspicion that it might be just a more subtle way of reinforcing the doctrine of "Might is Right." The historical fact is that programs of leveling—cultural, social, or political—have ended up by serving the interests of the stronger. In addition, the attempted negation of differences has provoked those who see themselves in a disadvantaged position to assert all the more insis-

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tently what they believe to be their distinctive differences, and to demand respect for those differences.

The contradictions in the modern striving for equality are mainly evident in three areas: ethnic identity, relations between the sexes, and the bodily condition of the human being. Despite the abominations of the Nazi regime, equality between the races remains an issue today. Indeed, in France the claim that human races are not equal has recently reignited polemics that we hoped were a thing of the past. At the same time, biologists are reminding us that, in scientific fact, there is but one human race. At a recent conference in Paris, leading biologists from around the world declared that "genetically speaking, a 'race' is a population that can be defined by 'absolute' markers, that is to say by a number of biological characteristics that are found exclusively among all the members of this population." Research all over the world demonstrates that the overwhelming majority of the genetic characteristics of the human species are found in virtually all populations. "In consequence," the scientists declared, "there exists only one human race, not several." The notions of equality and inequality, they said, make sense in the political, social, and juridical spheres, but find no support whatever in honest science.

And yet the issue of racial inequality does not go away, as witness the recent controversy surrounding the publication of *The Bell Curve* by Charles Murray and Richard Herrnstein. Claims about racial inequality require not only a scientific and philosophical response, but also a moral response. My response is derived from an experience when I first traveled extensively in the United States, long before I was a bishop. I had the privilege of attending in Chicago a meeting organized by the Reverend Jesse Jackson in 1969, and I have never forgotten the antiphonal exchange between the Rev. Jackson and thousands of young black people defiantly shouting, "I am somebody!" In that simple assertion is a profound moral and spiritual truth that must inform our response to all talk about inequality between the "races."

As agitated today, perhaps even more so, is the question of the relationship between the sexes. Of course there are many forms of feminism, but the more aggressive expression of the feminist movement may be leading our civilization into a blind alley. I think it indisputable, although it is surely disputed by some, that the differences between man and woman are anthropologically grounded. They are irreducible and linked to our condition as creatures. Such differences did not make necessary, and certainly do not justify, social and other inequalities that are rightly protested. But I am persuaded that such inequalities will be remedied neither by the confusion of the sexes nor by war between the sexes.

The third area in which the ideal of equality is today under challenge has to do with the human condition itself, insofar as our condition is bodily. We are fragile beings. Fragility is the condition of the child in the mother's womb, of old people who have lost their physical or mental capacities, of innumerable others who are maimed by illness, accident, or their own behavior. The laws of our societies attempt to single out and protect some of these disabled persons, placing them under guardianship because of their inability to care for themselves or make responsible decisions.

However, legal efforts to protect the most fragile among us are far from comprehensive or systematic. Protection is not extended to the unborn children, nor to all those who are subjected to one form or another of mercy-killing and euthanasia. Indeed, the tragic fact is that in recent decades there have been ominous retreats from the responsibility to guard those who cannot guard themselves. These retreats have been most dramatic at the entrance and exit gates of life, but there is also slight concern for the countless people in the middle of their lives who must simply put up with the fact that they are "less equal" than those who are healthy and self-sufficient. They are the victims of the unwritten rule that "Might is Right." They are misfits, domestic exiles, freaks, derelicts, pariahs, untouchables. Through its witness and ministries of mercy, the Church must never tire of declaring to society that these people, too, are somebodies.

In these three areas—ethnic identity, relations between the sexes, and the neediness of the most fragile—the law is made by the stronger, and human beings trample upon the hope for equality. Our reflection on the misadventures of liberty led us to ask again the question of Psalm 8, "What is man?" The opening pages of Genesis provide the answer: He is created "in the image and likeness of God." Human dignity is a derived dignity; it is the gift of God. This is not simply our answer to the question, "What is man?" It is God's answer. Such dignity must never be subjected to our comparative measurements, for it has its source in the sovereign decision of the divine liberty. Human dignity must never be understood as resting on the differences that human sinfulness has introduced into history.

As I have suggested, these modern questions are very old. The disciples of Jesus, we are told, quarreled over the question, "Who is the greatest?" (Mark 9:33-37, 10:42-45) In response, Jesus places a child in the midst of them. He also points to himself, noting that they call him lord and master and yet he has come not to be served but to serve. He is the servant, indeed the slave, of his servants, and he freely accepts the humiliation this entails. He accepts such humiliation, as St. Paul says, "to the point of death, even death on a cross." (Philippians 2:8)

God's revelation could not be more direct in challenging the doctrine that "Might is Right." The

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teaching and the life of the crucified Messiah stand in sharpest antithesis to the human will to power. This is not a dialectical relationship between power and powerlessness, but a victorious contradiction. The cross of Christ is indelibly imprinted upon history as the sign that what makes the world intelligible is this permanent and inescapable contradiction. It is a scandal that will not go away. Jesus invites those who would be greatest to make themselves the least and the servant of all.

The entirety of Christian truth rests inescapably and absolutely on this mystery. We dare not attempt to compromise it. The Christian message was rejected again in the nineteenth century by philosophies that invested their hopes in strength and progress. Influential thinkers declared repugnant a faith that invested its hope in a crucified Messiah and produced, they claimed, an ethic worthy only of the weak and cowardly. Their ideologies promised to liberate man from the alienation supported, they said, by Christianity. But now all should know better. What they and their ideologies failed to understand is that the secret of true strength is revealed in the weakness of the humiliated Messiah.

This and only this is the way of strength that can conquer violence. Exhibiting the wounds of his suffering, the risen Christ reveals that, across all their differences, human beings are fundamentally equal, even and especially those who are the weak and downtrodden. Our differences are not eliminated, and many of them are deserving of respect, but they are not the measure of our dignity. This is the key to the secret of human existence and of any promising human future. At the end of this terrible century, we must discover it again. The key, and we must learn to say it again without compromise or embarrassment, is love. It is the love of forgetting oneself in order to give oneself to the other. As Jesus said, "He who finds his life will lose it, and he who loses his life for my sake will find it." (Matthew 10:39)

Who is the greatest? The answer is: The one who makes himself the smallest, who loses everything and, as a result, is given everything. This is the principle of what Paul VI and John Paul II have called "the civilization of love." This is not a utopian dream. It is the way reality most truly is, as revealed in the life, death, and resurrection of Jesus Christ, and in the lives of people beyond number who have followed him. Let the proponents of "Might is Right" scoff if they will. We know through bitter experience the fruits of those who propose alternatives to the way of love.

Confronted by God's revelation, we are asked: What kind of civilization do you want? What are you willing to pay for it? We examined the misadventures of liberty and were led to the mystery of creation. We examined the misadventures of equality and were led to the mystery of redemption. Now we must examine the misadventures of fraternity.

At first flush, fraternity would seem to be no more than the logical consequence of liberty and equality. But it has other roots at the deepest levels of human self-consciousness. Brothers and sisters are born of the same father and the same mother. They are more to one another than are other relatives. Their common origin means that they share one and the same identity. For each, it is not possible to say "I" without entailing "we."

The idea of universal fraternity reflects the wish that all human beings might live together as loving brothers and sisters, each with the other as "another self." The commandment to love one's neighbor is given in Leviticus (19:18), and is joined by the Gospel with the commandment to love God (Matthew 5:43). The modern aspiration toward fraternity conforms to this commandment. One can treat like oneself only another self, or somebody who is perceived to be another self, as with a brother or sister.

The demand of fraternity raises its own questions, questions that have no easy answers. Again, the key question was put to Jesus: "Who is my neighbor?" (Luke 10:29) The need for fraternity is urgently felt in our day, and becomes more urgent as we consider the new millennium that is almost upon us. And yet, it seems that the demand is ever more cruelly crushed by the increasingly powerful means at man's disposal. Once again, there are three problems that must be addressed and may be decisive for the human future.

First, there is the problem of peace. At the beginning of the eighteenth century a new literary genre was born, the literature of pacifism. It began in 1712 when the Abbé de Saint-Pierre published his *Project to Make Peace Perpetual in Europe.* Jean-Jacques Rousseau's *Judgment on the Project of Perpetual Peace* was published posthumously in Geneva in 1782, and in 1795 an aging Immanuel Kant produced his *Project of Perpetual Peace.* There the idea of a "society of nations" was first formulated.

Also in our century we have seen various efforts to produce political, legal, and diplomatic systems that would ensure peace between the nations of the world. And yet, never before in human history have wars killed so many people as during these last two hundred years. After the end of the Cold War, some are so foolish as to think that the specter of war has vanished. More thoughtful people understand the terror of conflicts that may await us in the future.

The fear of war, the wish for peace, and the dream of universal fraternity are typically expressed in a synchronic vision of the world. That is to say, we think in terms of the relationships between peoples and nations at a given moment of history. But there is also the phenomenon of diachronic fraternity, of fraternity across time. Here I would direct our attention to the relationship between the generations. Probably more than others, Western societies, and the United

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States in particular, have dreamed of fashioning the relationship between older and younger generations on the model of fraternity. The consequence, and often the intent, is to eliminate the factor of authority that is inherent in paternal and maternal responsibilities.

This aspiration to fraternity has influenced deeply our educational systems and our everyday ways of living, popularly called our lifestyles. The result of this misadventure of fraternity has been, once again, just the opposite of what was hoped for. The voluntary withdrawal of parents, or their inability to play their role that necessarily involves the exercise of authority, has broken the vital links of transmission from one generation to another. The result is that the young then constitute themselves as a separate, autonomous social class. This is the "youth culture" that declares itself a world unto itself.

The attempt at diachronic fraternity ends up by undermining both diachrony and fraternity. When the responsibilities of paternity and maternity are denied, memory is weakened, and the very notion of history becomes unthinkable. Human experience is compressed, and distorted, by an all-pervasive presentism. The attempt at diachronic fraternity results in discarding life as something that, in its very essence, is received and is to be given to others. When young people no longer know that they have received their lives from their parents and, through them, from God, life becomes meaningless. Life is no longer open to others and, ultimately, to God.

This trend does not signify "the end of history," as some suggested at the disappearance of the hostile brother, meaning the former Soviet Union. In fact, the disappearance of the father could be a much more momentous development. We must not forget that civilizations that appear at some point in history can also disappear when they forget their origin and destiny. Paul Valery rightly said, "We civilizations know only too well that we are mortal."

The third domain in which the aspiration to fraternity is being put to the test is the ecological. The appearance of ecological concerns has several facets. At one level, it may reflect a kind of psychological regression, a longing to return to "Mother Earth" as depicted in ancient mythologies. But I would raise the caution that it is too easy to caricature the excesses and distortions that march under the banner of ecological concern. Environmentalism asks a very important question touching on fraternity, namely, What is humanity's spiritual goal when the aim is to master the cosmos?

The Bible teaches that the world has been given to man with the mandate that he care for it, so that it may bear fruit to the glory of the Creator whose deputy man is. In this view, man is like a father who receives from his father a legacy from which all the members of the family are to benefit. The cosmos may be seen as the home inhabited by the human fraternity. We are to cherish this home, exploring its greatness and its secrets. For us human beings, the cosmos is like the body of our bodies, and we are responsible for all the creatures that surround us and depend for survival upon our care of the world in which we and they live.

Peace, the relationship between generations, and ecology—in all three areas the aspiration to fraternity is challenged. In all three, God's revelation provides our culture with directions for fostering fraternity among peoples and nations, between the generations, and with the entire creation. If we ask how it is possible to foster fraternity in all these dimensions, we are in fact asking the question put to Jesus, "Who is my neighbor?" After telling the parable of the Good Samaritan, Jesus responds with another question, "Which of these, do you think, proved neighbor to the man who fell among the robbers?" And the lawyer who asked the first question said, "The one who showed mercy on him." "Go, and do likewise," said Jesus (Luke 10:25-37).

Most translations say that the Samaritan "had compassion on" the man by the roadside. The words used by Luke, however, indicate that the Samaritan was moved to pity "deep in his entrails." The Gospels reserve this Greek expression to describe not human compassion but what Jesus feels when he encounters the suffering. This is the case when he meets the widow of Nain (Luke 7:13), when he sees the crowd without a shepherd (Mark 6:34), and when the two blind men call out to him as he leaves Jericho (Matthew 20:34). This is also the expression used to indicate God's response when he sees his wounded and lost creatures. It is how the father felt when he saw his prodigal son coming back home (Luke 15:20); it is the attitude of the master toward the servant who could not pay his debt (Matthew 18:27).

In the Good Samaritan parable, the answer reported by Luke—"The one who showed mercy on him"—employs the Greek word normally used in the Gospels to depict God's love as it is manifested in his Son. Thus also the Blessed Virgin Mary in her Magnificat: "And his mercy is on those who fear him from generation to generation. . . ." (Luke 1:50) Zechariah takes up the same truth in the Benedictus: "To perform the mercy promised to our fathers . . . through the tender mercy of our God when the day shall dawn upon us from on high. . . ." (Luke 1:72,78) When Jesus concludes the parable with the command to go and do likewise, he is saying that to "make oneself neighbor" to the wounded, the abandoned, and the needy is to act divinely. It is to act as the Heavenly Father has, in Jesus Christ, acted toward us.

Even for the believer, such a command seems to be altogether too much. It challenges our human weakness. This command can make sense only within the

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logic of the mystery of the glorification of humanity. Liberty led us to an encounter with creation; equality led us to an encounter with redemption; and now fraternity brings us to glorification. To be neighbor to others as God is neighbor to us—this is a possibility only through our participation in the resurrected life of Christ. In the language of St. Paul, the Holy Spirit comforts our spirits, giving us the strength to love as we are loved (Romans 8:16). The Holy Spirit makes it possible for us to taste already now, in this historical moment before the End Time, the first fruits and the pledge of the final glorification when humanity enters God's abode and becomes the temple of its Creator and Redeemer (2 Corinthians 1:22).

Of course this participation in the final consummation is an act of faith, a glimmering of dawn that stirs and sustains hope for the sunrise. The contradictions that challenge and test our culture's aspirations to liberty, equality, and fraternity also challenge and test faith's response to these aspirations, which are in fact engraved in history by God's revelation. How can we help our culture to keep on hoping in the face of so much that seems to deny any reason for hope?

I have contended that the aspirations to liberty, equality, and fraternity have their origin in Christian faith. So also their future depends upon Christians who know that, despite all their misadventures, these aspirations are not in vain. They are not sentimental idealism or utopian delusion. They are human responses to God's love and faithfulness in creation, redemption, and glorification. Even when others despair, we Christians must, for our sake and for the sake of all humanity, keep the faith. This is the mission we have received from God as the disciples of Jesus Christ. Gratefully receiving what has been given us, we are to live out the gift; until the end of time faithfully bearing witness to the advent of the Kingdom of God among us. FT

Sursum Corda

For years and years, during the dark days
of war and famine, the faithful among us
prayed and watched and waited for a miracle,
for healing, for salvation, for deliverance from evil.
In the hot weather and in the cold weather
our numbers grew fewer and fewer.
The memory of good things faded: fresh flowers
in crystal vases, the look and feel of silk and linen,
the music made by piano and cello and violin
in hushed rooms hung with chandeliers
where during intermission we were awed
by Piero della Francesca, Botticelli, Fra Angelico.
Even the memory of the lover to whom we promised
I'll never forget you, last seen with her lips pressed
to the window of the last departing train, faded
to oblivion. The recording angels were appalled.
The eyes of the dead regarded their lost lives
wandering in the snow as though their deaths
had never happened. Choirs no longer sang
Sursum corda, Dona nobis pacem.
Even the ancient saying *Ara longa, vita brevis*
proved only half-true. And in our own native tongue
the lambent whisper *I love you*
rarely, if ever, escaped our lips. . . .

But now, years later, in Phase Five of the Reconstruction,
we are well again and living in New Times.
The previously inconvenient hills are levelled,
cleared of gorse and heather
to make way for Gore-Tex and healthier
living. We are governed by dicta that avoid the old pitfalls—
foremost, by the oh so eminently sound injunction
always to look forward, never to look back.

John Drexel

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Melville in Manhattan

J. Bottum

It should have been easy for Herman Melville to hate Manhattan—the "Babylonish brick-kilns of New York," as he wrote Nathaniel Hawthorne in 1851. It was there in Manhattan he was born in 1819, at 6 Pearl Street, down by the Battery, while his ambitious, hard-driven father busily bankrupted the family with a hapless importing firm three blocks away. It was there in Manhattan he was unhappily schooled, first at the Male School on Crosby Street and then at the Columbia Grammar School, and there he returned thirty years later to spend the bitter, dark end of his life—a misemployed customs inspector turned drunkard, possibly a wife-beater, and the forgotten man of American letters: a minor author who'd written a scandalous sea-tale or two early in life and hadn't had the sense to quit writing. It was there in Manhattan, in the family house at 104 East 26th Street, that his eldest son put a bullet through his brain in 1867, and there that Melville himself died in 1891—with an obituary in one New York journal that read, "even his own generation has long thought him dead."

Melville had as well a second reason to hate Manhattan—the whole urban world of "Cain's city and citified man," as he wrote in *Billy Budd* (1924), the novella whose publication helped restore his literary reputation thirty years after his death. As a young man in 1840, abandoning the upstate New York towns to which his family retreated after his father's bankruptcy and death, he visited Manhattan with his friend Eli Fly. But when the only work Fly could find was as a Wall Street scrivener, scratching out copies of endless legal documents, Melville fled, joining a whaler sailing for the Pacific on January 3, 1841. And it was there in the warm South Seas—the other side of the world from the city where men like Fly were "pent up in lath and plaster, tied to counters, nailed to benches, clinched to desks"—that at age twenty-three he found Nature's own paradise on an island in the Marquesas and in the arms of a woman he fictionalized as "Fayaway" in *Typee* (1846), the scandalous first novel he wrote upon his return.

The author had even a third reason to hate Manhattan—the city "taken by its rats," where there reverberates at night "a mixed surf / Of muffled sound, the Atheist roar of riot," as he described it in a poem from the 1860s. At the dawn of the nineteenth century, William Wordsworth might declare, "This did I feel in London's vast Domain: / The Spirit of Nature was upon me there," and at the close of the century Arthur Conan Doyle might make Sherlock Holmes shudder at the thought of the countryside's hidden crimes. But they were perfectly understood by their readers to be holding a deliberate paradox. As far back as Horace deserting ancient Rome for his Sabine farm—and indeed, far further back—there has run through Western literature a contrast between urban corruption and rural innocence. The Romantic tradition to which Melville at least partially belonged modified this pastoral motif in a number of ways, but it never lost its certainty that cities are perverse, the swarming nests of all that is evil and unnatural.

In January 1832, as he lay ruined, mad, and dying, Melville's father marked in the family Bible the fifty-fifth psalm—the Romantics' beloved psalm that reads: "Oh that I had wings like a dove! for then would I fly away. . . . For I have seen violence and strife in the city, . . . mischief also and sorrow are in the midst of it. Wickedness is in the midst thereof: deceit and guile depart not from her streets." Melville himself, in his own bleak old age, underlined in his edition of Balzac the sentence, "New York: A place where speculation and individualism are carried to the highest pitch, where the brutality of self-interest attains to cynicism, where man [is] essentially isolated." But even as early as 1850, still flush with his early literary fame and staying with his brother Allan in a

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brownstone on Fourth Avenue between 11th and 12th Streets, Melville decided that he had to escape the Manhattan in which he failed to build any reputation besides being "the man who lived among cannibals." Buying a 160-acre farm in Pittsfield, Massachusetts, near the home of his idolized mentor Hawthorne, he claimed to find "a sort of sea-feeling in the country." It could only have been with a cobblestone from a *city* street, he wrote back to a friend in Manhattan, that Cain killed Abel and introduced murder into the world.

The reasons Melville should have hated New York have led many readers to imagine that he did in fact undertake an assault upon urban life in his land-based novels, *Pierre* (1852) and *Israel Potter* (1855), and such stories as "Bartleby, the Scrivener" (1853). In Melville, "cities are invariably evil, heartless, remorseless, indifferent," one modern critic observes; "the city is a description of disappointment, frustration, and pain," another adds—and the list goes on: "The black, demonic aspects of the city are uppermost in Melville's mind in *Pierre*"; "*Israel Potter* is characterized by failure, frustration, and bleakness"; Bartleby's New York is "blank, heartless, and cruelly indifferent."

In an interesting new study, *Melville's City* (Cambridge University Press, 312 pp., $59.95), however, a scholar at MIT named Wyn Kelley demonstrates Melville's surprising distance from the rest of nineteenth-century thought about the city. Tracing the course of the author's work from *Typee* to *Billy Budd*, Kelley shows convincingly that Melville—though he borrowed from many different sources—belongs completely to none of the established genres of Victorian city writing: the Romantic pastoral that used urban depravity to extol rural virtue; the popular "Reform Literature" of the yellow journalists that sensationalized municipal corruption and disorder; the "scientific" tracts of the emerging city planning movement; or the urban strolls of the *flâneur* and the Addisonian "spectator" (a genre that reached its peak, for New York, with what Kelley calls the "humorous-genteel-sentimental-melodramatic-ironic" observations of Charles Dickens in his 1842 *American Notes*). And yet, though she shows Melville's uniqueness, Kelley misses, I think, the conclusion to which her evidence points.

A close reading of "Bartleby, the Scrivener," his most sustained study of New York, reveals in fact that Melville had a profoundly theological understandings of the nineteenth-century city. It is true that he never possessed much notion of effective social reform; in "Bartleby" the urban social order is as fixed and determined as the order of Nature. Packing hordes together in its poverty-stricken tenements and slums, the city breeds endless crime, filth, and disease. And yet, in that very forcing of people upon each other, the city also breeds the inescapable notice of crime, filth, and disease—and thereby makes possible the sudden and utter conviction of guilt.

With his overwhelming sense of fallen human nature, Melville grants little room for the operation of grace, and the reformation his characters become convinced they need is usually impossible for them to obtain. But tragedy—especially a death brought about by participation in an inevitable social logic—compels the recognition of fallenness and failure. The occasion for the sin of indifference coincides in "Bartleby" with the occasion for being convicted of indifference, for the city is the hard school in which we learn our own sinfulness.

There is something of a boom going on these days in Melville studies, with Kelley's book and at least half a dozen other major academic monographs appearing from university presses, and with two new full-length biographies published last year: Laurie Robertson-Lorant's relatively unimportant but informative *Melville: A Biography* (Potter, 752 pp., $40) and the first volume of the endlessly detailed *Herman Melville* (Johns Hopkins University Press, 941 pp., $39.95) by Hershel Parker, the grand old man of Melville studies.

This new interest has had some bad effects, with interminable arguments over Melville's sexuality and disputes over his wife-beating spilling onto the pages of the popular press. But one good effect has been the way readers are compelled to think again about the novelist's life. There are several unsolved puzzles about Melville: what really happened in the Marquesas about which he told so many different stories; why the warm relations he so desperately treasured with Hawthorne cooled; why he turned into such a bitter man in his late thirties; and why his career is punctuated not just by such triumphs as *Moby-Dick* (1851), "Bartleby, the Scrivener," "Benito Cereno" (1856), and *Billy Budd*, but also by such artistic (and financial) disasters as *Mardi* (1849), *Pierre*, and *The Confidence-Man* (1857). But his relation to the city—Melville in Manhattan—may be the most interesting puzzle of all.

The testimony of those who knew him is not that he hated the city. "He has always liked New York, & is not the first man who has been beguiled into the country, & found by experience that it was not the place for him," his mother wrote a few months before Melville sold his farm and moved back to Manhattan. Decades later, his granddaughter described the enjoyment he found in daily walks through the city, up from the house on 26th and into Central Park, "the Mecca of most of our pilgrimages." Though he often deserted Manhattan, he always returned—and if he seemed at times not to like New York City, he seemed not to like any place very much: not the Albany where his Dutch grandparents had settled, the Boston where he courted his long-suffering wife, the Pittsfield farm he could never make pay, or the

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island paradise where he stayed just four weeks before fleeing (if his fictionalization in *Typee* is an accurate guide) in fear of being raped and eaten by cannibals.

Even the evidence from Melville's fiction reveals no simple pattern of despising the city. Though the narrating Ishmael, as *Moby-Dick* opens, makes a much-celebrated claim that every city-dweller longs to escape to the sea, the actual tone of the passage betrays a conflicting affection for New York:

> There now is your insular city of the Manhattoes, belted round by wharves as Indian isles by coral reefs. . . . Circumambulate the city of a dreamy Sabbath afternoon. Go from Corlears Hook to Coenties Slip, and from thence, by Whitehall, northward. What do you see?—Posted like silent sentinels all around the town, stand thousands upon thousands of mortal men fixed in ocean reveries. . . . But these are all landsmen; of week days pent up in lath and plaster—tied to counters, nailed to benches, clinched to desks. . . . Nothing will content them but the extremest limit of the land.

Pierre tells in part the story of a young man's corruption by Manhattan. "In the flashing, sinister, evil cross-lights of a druggist's window," the newly arrived Pierre is accosted by a prostitute, "horribly lit by the green and yellow rays from the druggist's"—only to scurry away, thinking, "My God! . . . the town's first welcome to youth!" Later, after he has joined in the city's evil, he passes out in the street and awakens to find himself "lying crosswise in the gutter, dabbled with mud and slime." But *Pierre* also tells in part the story of a self-righteous young prig who brings his pride and inner corruption to the city in order to find them confirmed.

It is hard to say just what *Moby-Dick*, Melville's greatest and most famous work, really is: a metaphysical Romantic tragedy about Captain Ahab's sexual obsession with an enormous white whale; an immense picaresque comedy about sailing; or a serio-comic grand opera that begins with the narrating Ishmael bored by the streaming crowds of New York and ends with him alone in the ocean, floating on the harpooner Queequeg's coffin. But however one takes *Moby-Dick*, the book sufficiently demonstrates that its author was capable of huge, cosmic ideas about life and death, freedom and necessity, wisdom and insanity.

And yet, even as he develops such ideas in his fiction, he seems less to think them than to feel or even suffer them—wincing as they crash from side to side in his brain like dense boulders of thought. Melville was not a systematically educated man: thought backward in his early schooling, he taught himself literature by devouring haphazard naval libraries during the four years of his sailing adventure. And his lack of education meant that he had only the crudest intellectual tools with which to try to break his ideas open.

Perhaps the best way to grasp Melville is to take him as a relentless convoluter. What other writer would have taken an opening sentence as good as "Call me Ishmael" and buried it behind the ten pages of small-print quotation with which Melville begins *Moby-Dick*? What other writer, having just finished *Moby-Dick* and standing at the peak of his powers, would have taken in his next book a simple story about a young man's descent in the city and compounded it into the unreadable, pseudo-Hawthornian mess of *Pierre*?

Even this understanding of Melville as a convoluter, however, itself needs convoluting, for he never deliberately started out to be anything other than simple. After the success of *Typee* and *Omoo* (1847), his third book, *Mardi*, proved unpopular in 1849, and under financial necessity he quickly produced in the next year two sailing stories, *Redburn* and *White-Jacket*, before turning under the influence of Hawthorne to the complexities of *Moby-Dick* and *Pierre*. He clearly intended these intermediate books as straightforward narrations: *Redburn* is merely a "nursery tale," he wrote in an admiring letter to Richard Henry Dana, the lawyer whose account of leaving Harvard to sail around Cape Horn was recorded in the immensely popular *Two Years Before the Mast* (1840). But *Redburn* and *White-Jacket* show Melville incapable of leaving his material simple and straightforward, and the books did not, in fact, prove financial or popular successes.

The problem lies partly in the fact that Melville felt his ideas as moods more than he thought them as ideas, and partly in the weakness of his schooling. He knew the Bible well, inheriting from his churchgoing age an almost unconsciously profound biblical awareness that left Scripture the ground on which his mind invariably walked. But Melville had little else of the kind of general education that might have stocked his brilliant mind with anything beyond the intellectual commonplaces of his day. His typical pattern of writing is to take a hackneyed, obvious notion like the Romantic view of the corrupt city and the innocent country, and twist it into complex, awkward shapes in an attempt to make it express the far denser mood-thought he felt about the city.

All of this—his deeply felt ideas, his biblical knowledge, his autodidactical education, and his convoluting development of a theme—shows to clear effect in what most critics think his greatest story, "Bartleby the Scrivener: A Story of Wall Street." Harsh reviews doomed *Pierre* in 1852; by the time Melville died forty years later, the novel had brought in only $157. And yet, at the very moment *Pierre* was failing, Melville began to make his only steady

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money when first *Harper's* magazine and then *Putnam's* asked him to contribute regular stories. Completed quickly at the farm in Pittsfield, "Bartleby" was printed in *Putnam's* in three installments in 1853, paying the author $85.

Relying on memories of his friend Fly's work as a law-copyist in 1840, and of the office at 10 Wall Street where he visited his brother Allan after returning from sea in 1844, Melville sets his story in a modern, nineteenth-century office building. An elderly lawyer keeps a quiet practice, doing "a snug business among rich men's bonds, and mortgages, and title-deeds." Indeed, he adds, "I do not speak in vanity, but simply record the fact, that I was not unemployed in my profession by the late John Jacob Astor; a name which, I admit, I love to repeat; for it hath a rounded and orbicular sound to it, and rings like unto bullion." He initially employs two clerks, but as the story opens, he has been named a Master in Chancery, where wills are read and estates settled. And in answer to his advertisement for an additional scrivener, there appears a "pallidly neat, pitiably respectable, incurably forlorn" figure named Bartleby.

At first, the work goes well. But one day, directed to check his copies, the clerk replies, "I would prefer not to." As Bartleby continues to refuse to help verify his work, the lawyer comes to feel as though in some utterly unspecifiable way he needed Bartleby's refusal. Having allowed the scrivener in his "mild effrontery" to remain after the first noncompliance, he is incapable of firing him, even as what Bartleby prefers not to do escalates. Each new refusal is met by some new revelation that binds the employer's sympathy. One Sunday, stopping on his way to a downtown church, the lawyer discovers Bartleby is living in the office—and "Presentiments of strange discoveries hovered round me. The scrivener's pale form appeared to me laid out, among uncaring strangers, in its shivering winding sheet. . . . I did not accomplish the purpose of going to Trinity Church that morning. Somehow, the things I had seen disqualified me for the time from church-going."

When Bartleby prefers even not to copy, the lawyer at last fires him. But Bartleby raises his "passive resistance" one more step and refuses to leave. The hopelessly entangled lawyer, desperate to rid himself of "this man, or, rather, ghost" without violence, finally moves to another building. When new tenants have Bartleby removed to the New York jail called "the Tombs," the lawyer bribes a warder to see to his care. But Bartleby refuses help, preferring at the end even not to speak or eat. The lawyer visits the scrivener a final time, only to find that Bartleby has turned his face to the prison wall. "He's asleep, ain't he?" asks the warder; "With kings and counselors," the lawyer replies in the formula for welcome death from the Book of Job. In a postscript, the lawyer relates a vague rumor that Bartleby once worked in the Dead Letter department of the post office: "When I think over this rumor, hardly can I express the emotions which seize me. Dead letters! does it not sound like dead men?" "Ah, Bartleby! Ah, humanity!" he concludes in an overphrasing that rings strangely ironic.

There is a great deal going on in the story. From the first introduction of Bartleby as "pallid," to his imprisonment in "the Tombs," to the postscript's rumor of "dead letters," Melville plays with common phrases that mention death, restoring to these dead metaphors more and more of their original morbid meaning. From the first description of the matching clerks, to the tedious reproduction of legal documents, to the inexplicable sympathy the lawyer feels for Bartleby, Melville delves deeper and deeper into the notion of copies. From the subtitle's mention of "Wall Street," to the interior screens set up to divide the office, to the prison's barricades, Melville gives more and more complicated expression to the idea of walls. Themes of food, paper, silence, law, and money swirl through the story as well.

All these features of "Bartleby" meet, however, in Melville's convoluted use of Cain and Abel to present his mood-thought about the city. The story makes innumerable references to the Bible, from the opening parody of biblical language in the description of Astor, to the parody of Pilate's questioning of Christ in the lawyer's interview with a mute Bartleby, to the seriously meant quotation from Job. But perhaps the key reference occurs when the lawyer reflects that both he and Bartleby are "sons of Adam"—at which point the reader is expected to see behind a standard metaphor for shared humanity and recollect that Adam's first son was Cain, the builder of the first city and the slayer of his brother. Perhaps the reader is even expected to remember that the Gospel of Luke declares, "The blood of all the prophets, which was shed from the foundation of the world, may be required of this generation; from the blood of Abel unto the blood of Zacharias," and continues in the next verse, "Woe unto you, lawyers! for ye have taken away the key of knowledge: ye entered not in yourselves, and them that were entering in ye hindered."

This reference to Cain the builder in part Melville's declaration that the lawyer, the "citified man" who takes away Bartleby's key, is responsible for the scrivener's death. But the feeling about the city that Melville is trying to express runs deeper than the pastoral commonplaces and reform literature of his contemporaries. The grave-destined Bartleby is no perfect victim; the same chapter of Luke that reproves lawyers denounces "scribes" like Bartleby as "graves which appear not, and the men that walk over them are not aware of them." The lawyer who "keeps" his office—and gives his coat to his older clerk, and bribes the warder to feed Bartleby, and (in a last attempt to save the scrivener) invites him into his home—is in fact his brother's keeper in a way that only the city allows. And

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his sympathy for his scrivener and the guilt he feels when he dies are possible only in the close confines of urban life. Melville had no illusions about New York, but the city stands in his mind as the place where men learn not only cruel indifference to their brothers, but the necessity to keep them in charity as well.

The author "has lost his prestige," one publisher wrote in 1855, "and I don't believe the *Putnam's* stories will bring it up." After returning to Manhattan, Melville achieved some financial security by becoming a customs inspector in 1866, transferring in 1878 from the Battery's Custom House to an office on the East River at 76th Street. The pace of his writing slowed with his new work. *Israel Potter, The Confidence-Man,* and his Civil War poems, *Battle-Pieces,* had done little to restore him to public notice, and *Clarel,* his long poem from the 1870s, was, as he himself described it, "eminently suited for unpopularity." In the mid-1880s, inheritances eased his finances and a few British critics began to speak of him as a neglected American genius. But it came too late—his habit of bitterness too well established by his drinking, his rejection by Hawthorne, and his favorite son's suicide to allow him much happiness in the few years he had left. *Billy Budd,* the work that would reestablish his reputation, remained unpublished on his desk in the house on 26th Street when, in September 1891, he was laid next to his son in Woodlawn Cemetery in The Bronx. The convoluted New York City of his birth remained his home. FT

Critics Under Statues

Beneath statues
of Civil War heros
On bronze horses,

Green with age
And victory, sits
The ragged
infantry

Of every park,
Pairs of drunks
Passing bottles

Back and forth
Like magicians
Handling fire,

Swallowing wine
Cold and raw,
Swapping tales

Of war, agreed
That bums should
Be in bronze

And generals made
To sit on benches.
The democracy

Of summer has
Its say. Come
December, hands

Stretched out
To trash-can fires
Long for peace.

Lawrence Dugan

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We Hold These Truths

A Statement of Christian Conscience and Citizenship

Following upon the intense public discussion occasioned by our November 1996 symposium on judicial usurpation, Charles Colson of Prison Fellowship and Father Richard John Neuhaus convened a meeting of Christian leaders in Reston, Virginia, to consider the development of a statement on "conscience and citizenship" relative to the American constitutional order. After months of drafting and consultation, it was decided to release the statement on the Fourth of July. Historians of American religion have observed that "We Hold These Truths" represents an unprecedented range of Christian leadership addressing together a question of great public moment. Although many others have indicated their support, the list of names appended here is limited to the original signatories. The text of the statement was agreed upon before the decisions of the Supreme Court discussed in this issue's symposium were announced at the end of June. However one may evaluate the significance of those decisions, they do not substantively change, and indeed may make more urgent, the questions addressed by "We Hold These Truths."

— The Editors

On this two hundred and twenty-first anniversary of the Declaration of Independence, we join in giving thanks to Almighty God for what the Founders called this American experiment in ordered liberty. In the Year of Our Lord 1997, the experiment is deeply troubled but it has not failed and, please God, will not fail. As America has been a blessing to our forebears and to us, so will it be a blessing to future generations, if we keep faith with the founding vision.

Invoking "the law of nature and of nature's God," the Founders declared, "We hold these truths to be self-evident." This Fourth of July Americans must ask themselves whether they hold them still. We, for our part, answer emphatically in the affirmative. We affirm that before God and the law all are equal, "endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness." In recent years it has become increasingly manifest that these truths cannot be taken for granted. Indeed, there is ominous evidence of their rejection in our public life and law.

As leaders of diverse churches and Christian communities, we address our fellow citizens with no partisan political purpose. Our purpose is to help repair a contract too often broken and a covenant too often betrayed. We recall and embrace the wisdom of our first President, who declared in his Farewell Address: "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens." Religion and morality are not an alien intrusion upon our public life but the source and foundation of our pursuit of the common good.

It is in the nature of experiments that they can succeed, and they can fail. President Washington said in his First Inaugural Address: "The preservation of the sacred fire of liberty and the destiny of the republican model of government are justly considered, perhaps, as deeply, as finally, staked on the experiment entrusted to the hands of the American people." We urge the Christians of America to join us in a candid acknowledgment that we have not been as faithful as we ought to that great trust.

Nations are ultimately judged not by their military might or economic wealth but by their fidelity to "the laws of nature and nature's God." In the view of the Founders, just government is self-government. Liberty is not license but is "ordered liberty"—liberty in response to moral truth. The great threat to the American experiment today is not from

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enemies abroad but from disordered liberty. That disorder is increasingly expressed in a denial of the very concept of moral truth. The cynical question of Pontius Pilate, "What is truth?", is today frequently taken to be a mark of sophistication, also in our political discourse and even in the jurisprudence of our courts.

The bitter consequences of disordered liberty resulting from the denial of moral truth are by now painfully familiar. Abortion, crime, consumerism, drug abuse, family disintegration, teenage suicide, neglect of the poor, pornography, racial prejudice, ethnic separatism and suspicion—all are rampant in our society. In politics, the public interest is too often sacrificed to private advantage; in economic and foreign policy, the lust for profits overrides concern for the well-being of families at home and the protection of human rights abroad. The powerful forget their obligation to the powerless, and the politics of the common good is abandoned in the interminable contention of special interests. We cannot boast of what we have made of the experiment entrusted to our hands.

While we are all responsible for the state of the nation, and while our ills no doubt have many causes, on this Fourth of July our attention must be directed to the role of the courts in the disordering of our liberty. Our nation was constituted by agreement that "we the people," through the representative institutions of republican government, would deliberate and decide how we ought to order our life together. In recent years, that agreement has been broken. The Declaration declares that "governments are instituted among men, deriving their just powers from the consent of the governed." In recent years, power has again and again been wielded, notably by the courts, without the consent of the governed.

The most egregious instance of such usurpation of power is the 1973 decision of the Supreme Court in which it claimed to have discovered a "privacy" right to abortion and by which it abolished, in what many constitutional scholars have called an act of raw judicial power, the abortion law of all fifty states. Traditionally in our jurisprudence, the law reflected the moral traditions by which people govern their lives. This decision was a radical departure, arbitrarily uprooting those moral traditions as they had been enacted in law through our representative political process. Our concern is both for the integrity of our constitutional order and for the unborn whom the Court has unjustly excluded from the protection of law.

Our concern is by no means limited to the question of abortion, but the judicially imposed abortion license is at the very core of the disordering of our liberty. The question of abortion is the question of who belongs to the community for which we accept common responsibility. Our goal is unequivocal: Every unborn child protected in law and welcomed in life. We have no illusions that, in a world wounded by sin, that goal will ever be achieved perfectly. Nor do we assume that at present all Americans agree with that goal. Plainly, many do not. We believe, however, that democratic deliberation and decision would result in laws much more protective of the unborn and other vulnerable human lives. We are convinced that the Court was wrong, both morally and legally, to withdraw from a large part of the human community the constitutional guarantee of equal protection and due process of law.

The American people as a whole have not accepted, and we believe they will not accept, the abortion regime imposed by *Roe v. Wade*. In its procedural violation of democratic self-government and in its substantive violation of the "laws of nature and of nature's God," this decision of the Court forfeits any claim to the obedience of conscientious citizens. We are resolved to work relentlessly, through peaceful and constitutional means and for however long it takes, to effectively reverse the abortion license imposed by *Roe v. Wade*. We ask all Americans to join us in that resolve.

The effort of "we the people" to exercise the right and responsibility of self-government has been made even more difficult by subsequent decisions of the Court. In its stated effort to end the national debate over abortion, the Supreme Court in *Planned Parenthood v. Casey* (1992) transferred the legal ground for the abortion license from the implied right of privacy to an explicit liberty right under the Fourteenth Amendment. The Court there proposed a sweeping redefinition of liberty: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." The doctrine declared by the Court would seem to mean that liberty is nothing more nor less than what is chosen by the autonomous, unencumbered self.

This is the very antithesis of the ordered liberty affirmed by the Founders. Liberty in this debased sense is utterly disengaged from the concepts of responsibility and community, and is pitted against the "laws of nature and of nature's God." Such liberty degenerates into license for the oppression of the vulnerable while the government looks the other way, and throws into question the very possibility of the rule of law itself. *Casey* raises the serious question as to whether any law can be enacted in pursuit of the common good, for virtually any law can offend some individuals' definition of selfhood, existence, and the meaning of life. Under the doctrine declared by the Court, it would seem that individual choice can always take precedence over the common good.

Moreover, in *Casey* the Court admonished pro-life dissenters, chastising them for continuing the debate and suggesting that the very legitimacy of the law depends upon the American people obeying the

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Court's decisions, even though no evidence is offered that those decisions are supported by the Constitution or accepted by a moral consensus of the citizenry. If the Court is inviting us to end the debate over abortion, we, as Christians and free citizens of this republic, respectfully decline the invitation.

The Court has gone still further in what must be described as an apparent course of hostility to democratic self-government. In *Lee v. Weisman* (1992), the Court seemed to suggest that an ethic and morality that "transcend human invention" is what is meant by religion that is constitutionally forbidden ground for law. In *Romer v. Evans* (1996), thousands of years of moral teaching regarding the right ordering of human sexuality was cavalierly dismissed as an irrational "animus." It is exceedingly hard to avoid the conclusion that the Court is declaring that laws or policies informed by religion or religiously based morality are unconstitutional for that reason alone. In this view, religion is simply a bias, and therefore inadmissible in law. Obviously, this was not the belief of those who wrote and ratified our Constitution. Just as obviously, the Court's view is not accepted by the people today. For the Founders and for the overwhelming majority of Americans today, ethics and morality transcend human invention and are typically grounded in religion.

If the Supreme Court and the judiciary it leads do not change course, the awesome consequences are clearly foreseeable. The founding principle of self-government has been thrown into question. Already it seems that people who are motivated by religion or religiously inspired morality are relegated to a category of second-class citizenship. Increasingly, law and public policy will be pitted against the social and moral convictions of the people, with the result that millions of Americans will be alienated from a government that they no longer recognize as their own. We cannot, we must not, let this happen.

Questions of great moral moment for the ordering of our life together will continue to demand deliberation and decision. The Court's justification of the abortion license under its debased concept of liberty has brought us to the brink of endorsing new "rights" to doctor-assisted suicide and euthanasia which threaten those at the end of life, the infirm, the handicapped, the unwanted. We are confronted by a radical redefinition of marriage as courts declare marriage to be not a covenanted commitment ordered to the great goods of spousal unity and procreation but a mere contract between autonomous individuals for whatever ends they happen to seek. Under a specious interpretation of the separation of church and state, our public schools are denuded of moral instruction and parents are unjustly burdened in choosing a religious education for their children. These are among the many urgent problems that must be addressed by a free and self-governing people.

Washington spoke of "the experiment entrusted to the hands of the American people." We cannot simply blame the courts for what has gone wrong. We are all responsible. The communications media, the entertainment industry, and educators bear a particular burden of responsibility, as do we Christian leaders and our churches when we fail to instill the hard discipline of ordered liberty in the service of the common good.

A most particular responsibility belongs also to our elected officials in state and national government. Too often, legislators prefer to leave difficult and controverted questions to the courts. This must be called what it is, an abdication of their duty in our representative form of democratic government. Too often, too, Christian legislators separate their convictions from their public actions, thus depriving our politics of their informed moral judgment. The other side of judicial usurpation is legislative dereliction. We must believe that the Constitution bequeathed us by the Founders does not leave us without remedies for our present unhappy circumstance.

The crisis created by *Roe* and its legacy is not without precedent in our national life. Our present circumstance is shadowed by the memory of the infamous *Dred Scott* decision of 1857. Then the Court, in a similar act of raw judicial power, excluded slaves of African descent from the community of those possessing rights that others are bound to respect. Abraham Lincoln refused to bow to that decision. It was in devotion to our constitutional order that Lincoln declared in his First Inaugural Address that the people and their representatives had not "practically resigned their government into the hands of that eminent tribunal." Today we are again in desperate need of political leaders who accept the responsibility to lead in restoring government derived from the consent of the governed.

Let no one mistake this statement as an instance of special pleading for Christians or even for religious people more generally. Our purpose is to revitalize a polity in which all the people of "we the people" are full participants. Let no one fear this call for our fellow Christians to more vibrantly exercise their citizenship responsibilities. We reject the idea that ours should be declared a "Christian" nation. We do not seek a sacred public square but a civil public square. We strongly affirm the separation of church and state, which must never be interpreted as the separation of religion from public life. Knowing that the protection of minorities is secure only when such protections are supported by the majority, we urge Christians to renewed opposition to every form of invidious prejudice or discrimination. In the civil public square we must all respectfully engage one another in civil friendship as we deliberate and

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decide how we ought to order our life together.

The signers of this statement are by no means agreed on all aspects of law and public policy. We are Catholics, Orthodox, and Protestants of differing convictions on many issues. We are conservatives and progressives of various ethnic and racial identities and with differing political views. We are agreed that we must seek together an America that respects the sanctity of human life, enables the poor to be full participants in our society, strives to overcome racism, and is committed to rebuilding the family. We are agreed that government by the consent of the governed has been thrown into question, and, as a result, our constitutional order is in crisis. We are agreed that—whether the question be protection of the unborn, providing for the poor, restoring the family, or racial justice—we can and must bring law and public policy into greater harmony with the "laws of nature and of nature's God."

Not all Americans are agreed on the implications of those laws, and some doubt that there are such laws. But all can exercise the gift of reason to discern the moral truth that serves the common good. All can attempt to persuade their fellow citizens of the truth that they discern. We Americans are a political community bound to one another in civil argument. Such is the experiment in ordered liberty that has been entrusted to our hands. That experiment is today imperiled, but we are resolved that it continue and flourish, for as it was said two hundred and twenty-one years ago so also it is the case today that "We hold these truths."

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African Methodist Episcopal Church

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THE TRANSFORMATION OF THE FOURTEENTH AMENDMENT

Second Edition
By Raoul Berger
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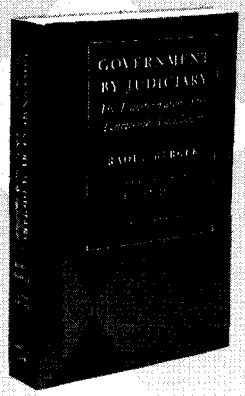

It is the thesis of this monumentally argued book that the United States Supreme Court—largely through abuses of the Fourteenth Amendment to the Constitution—has embarked on "a continuing revision of the Constitution, under the guise of interpretation." Consequently, the Court has subverted America's democratic institutions and wreaked havoc upon Americans' social and political lives.

One of the first constitutional scholars to question the rise of judicial activism in modern times, Raoul Berger points out that "the Supreme Court is not empowered to rewrite the Constitution, that in its transformation of the Fourteenth Amendment it has demonstrably done so. Thereby the Justices, who are virtually unaccountable, irremovable, and irreversible, have taken over from the people control of their own destiny, an awesome exercise of power."

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Raoul Berger, now 96, retired in 1976 as Charles Warren Senior Fellow in American Legal History at Harvard University.

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Books In Review

Back to the Future?

RELIGION AND STATE IN THE AMERICAN JEWISH EXPERIENCE. Edited by JONATHAN D. SARNA and DAVID G. DALIN. *University of Notre Dame Press. 368 pp. $40.*

Reviewed by **Elliott Abrams**

IN 1813, the trustees of Shearith Israel Congregation in New York City joined a heated debate over aid to private schools. They petitioned the state legislature not to give any aid to the New York Free School, on the grounds that such funding would be "not only impolitic but unjust." Why? The Free School was unrelated to any religious denomination, and support for it would therefore "tend in its effects to encourage parents in habits of indifference to their duties of religion." This belief that government should encourage religion was—surprising as it may now seem—the "original intent" of American Jews. In 1787 Jonas Phillips, a leader of the Philadelphia synagogue Mikveh Israel, wrote to the Constitutional Convention then meeting in his city that "the Israelites will think themselves happy to live under a government where all religious societies are on an equal footing."

ELLIOTT ABRAMS *is President of the Ethics and Public Policy Center.*

How American Jews got from there to militant separationism is the story told in the new book edited by Jonathan D. Sarna and David G. Dalin, *Religion and State in the American Jewish Experience.* This is a collection of documents presented with a prefatory essay by Sarna and with chapter and document introductions by both men. Sarna is Professor of American Jewish History at Brandeis, Dalin Associate Professor of American Jewish History at the University of Hartford, and both are prolific authors in the field.

Accumulations of historic documents such as this one always run the risk of dryness, but Sarna and Dalin have successfully avoided it. Combining excerpts from personal letters and memoirs with Supreme Court briefs, speeches, bill drafts, and other sources, they have drawn a fascinating portrait of American Jews wrestling with their place in the American social and political order. We read the words of Jews worried about Peter Stuyvesant and General Grant, and Jews seeking the right to take an oath on a Jewish Bible or keep a store open on the Christian Sabbath—or to participate in Thanksgiving ceremonies, refuse to sing Christmas carols, serve as chaplains in the

Each family, in some way, should be involved in the preparation for the great jubilee. Was it not through a family that the Son of God chose to enter human history?

--Pope John Paul II

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Union Army, or get kosher food in federal prisons.

It is striking how little the main issues have changed over the centuries. As the authors say in their introduction to the chapter on the colonial era, "Ultimately, the debate over the rights of Jews that began in colonial America continues still: it is a debate over the social and religious character of society as a whole." This is true whether the topic is early state laws requiring that officeholders be Christians, the long argument over Sunday closing laws, public aid to parochial schools, or Christmas decorations on public property. For Americans, as the Jewish response to Supreme Court Justice David Brewer's 1905 book *The United States—A Christian Nation,* put it, "the Jew is a distinctively, perhaps the distinctively, non-Christian element." For Jews, as Sarna and Dalin correctly point out, the debate remains one between those who see any governmental support for religion as likely to lead to establishment of Christianity as a state religion, and those who "believe that religious indifference—which they blame, in no small part, on state policies—constitutes the greatest danger facing the American Jewish community."

It is fair to say that the latter camp is gaining a bit these days, due to demographic data suggesting an erosion of the Jewish community's strength through disaffiliation and intermarriage. But Sarna and Dalin wish to point out that this more friendly view of religion's relationship to the state is no mere product of the 1990s and no abandonment of Jewish tradition. It is rather a return to an earlier consensus, one abandoned roughly a century ago "in response to the dramatic revival of efforts to create a Christian America during the last third of the nineteenth century," including constitutional amendments that would give Christianity an explicit place in the American legal order. The Jewish reaction was to "embrace the doctrine of strict separationism as the best and most legitimate defense." Here again we see the relevance of the debate Sarna and Dalin describe and the documents they present, for Jews are now actively arguing about whether a more vigorous American Christianity presents a danger to them.

Whether, as the authors suggest, that Jewish embrace of separationism was entirely reactive, and entirely caused by events outside the Jewish community itself, is less clear. There can be no doubt that the "Christian Staters," as those who sought legal and constitutional privileges for Christianity were called, roused American Jews to near-unanimous opposition. Still, the turn to separationism may reflect as well the community's own turn away from traditional Judaism and toward the liberal "faith" that for so many Jews replaced

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it. This was particularly true among Jewish elites, for as time passed community leadership passed from the rabbinate to laymen whose own attitude toward religion was often indifference or even hostility. Sarna and Dalin point out that militant separationism was first the view only of Reform Jews, but then spread to become "the prevailing ideology of the vast majority of American Jews on issues of religion and state." Can it be coincidental that this happened as that "vast majority" also moved in the direction of Reform Judaism in weakening its commitment to traditional Jewish rituals and beliefs?

There are many gems in these pages. How striking is the Enlightenment faith of one of Reform's earliest leaders, Rabbi Isaac Mayer Wise, who wrote in 1869 that "the morals of a people are always in strict proportion to its intelligence and freedom. . . . The public schools are institutions for the education of free, intelligent, and enlightened citizens. That is all. . . . The growth of freedom depends on the progress of enlightenment, and vice versa. Enlightenment springs from the sciences." What role is left here for religion, in public affairs or for that matter in private ones? How distant from the current Jewish political orthodoxy are the views of Louis Marshall, founder of the American Jewish Committee, who wrote in 1922 in favor of reading the "majestic English of the King James version" of the Bible in public schools.

> Personally I believe that it would not do our Jewish children a bit of harm to become familiar with the Bible even though it be read in the public schools. It will probably be the only way in which many of them will ever gain the slightest familiarity with the Book of Books. Save in exceptional circumstances they do not read it in their homes and they read very little of it in their Sabbath schools, and, what is worse, only a very small percentage of the Jewish children attend any Sabbath school. . . . We must not permit readings which would offend the parents of Catholic or Jewish children. Some method should be found . . . [to] confer upon the youth of this country the advantage of familiarizing itself with the noblest ethical teachings the world has known, couched in the purest of English.

Professors Sarna and Dalin note that "American Jews have supported a wide range of positions on church-state relations; indeed, over the long span of American Jewish history there has been far less communal consensus on the subject than is generally assumed." Today, as Americans of all religions plunge again into the debate over church

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Quite seriously, folks, if Hell is a piece of cake, and if Jesus is the Savior, then He's a pretty piddling Savior, for He hasn't saved us from anything worth fearing. After all, the immoral nonbeliever *expects* "nonbeing" after he dies — that's exactly what will please him.

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And, worst of all, attempts to air-condition Hell make it likely that more and more people will wind up in that nasty, dreadful place. Dr. Bernard Nathanson, the atheist and former abortionist who presided over some 75,000 abortions, recently converted to Catholicism. Why? Because he said he was "afraid" of Hell, of "an eternity perhaps more terrifying than anything Dante envisioned...." But had he been told that Hell is merely "nonbeing," he might have decided it wasn't worth the trouble to repent and convert.

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and state issues, this is a particularly useful reminder.

Every Sparrow that Falls

RAIN WITHOUT THUNDER: THE IDEOLOGY OF THE ANIMAL RIGHTS MOVEMENT. By GARY L. FRANCIONE. *Temple University Press. 366 pp. $59.95 cloth, $22.95 paper.*

Reviewed by **Thomas Sieger Derr**

ANYONE WHOSE IMAGE of the animal rights movement is one of nasty-tempered radicals who bomb laboratories and spray paint on fur coats will be in for a surprise in reading Gary Francione's *Rain Without Thunder.*

THOMAS SIEGER DERR, *a member of the Editorial Advisory Board of* FIRST THINGS, *teaches in the Department of Religion and Biblical Literature at Smith College.*

Francione, a law professor at Rutgers and an animal rights advocate himself, here scolds the movement for actually being too temperate, for having sold out to the animal "exploiters" in search of cultural acceptance. His targets are the major groups in their national mode, increasingly centralizing their efforts and squeezing out the grassroots, behaving like any self-aggrandizing organization—which, in Francione's view, tends to make them less radical. About the only group that meets his approval is the Animal Liberation Front, the outfit that raids laboratories to free the captive experimental animals. As for the rest, ranging from the ultra-conservative Humane Society to the pretentiously radical-talking People for the Ethical Treatment of Animals (PETA), they behave "far more like bourgeois charities than revolutionary organizations," because they are unwilling to attack the legal status of animals as private property.

Francione is particularly vexed by PETA's whoring after entertainment stars in its search for fame and money, especially in using naked women in its anti-fur campaign ("I'd rather go naked than wear fur") and descending to shamelessly pornographic advertising. The whole movement reeks of toadying to the reigning powers, instead of standing firm as outside radicals attacking the system of "institutionalized animal exploitation." They compromise and are thus compromised.

The problem is not just a desire for social status, though that is a large part of it and the occasion for Francione's special scorn. The difficulty is also rooted in the inability of most animal advocacy groups to understand the difference between mere reform and total abolition. The first is "welfarism," concerned to reduce pain and suffering. The second is the true "animal rights" position, concerned to treat animals as ends in themselves unavailable for human use. A movement dedicated only to treating animals kindly or "humanely," sparing them "unnecessary" suffering, concedes the argument that they may be used for human welfare as long as certain safeguards are in place, that suffering "necessary" (or unavoidable) to human ends is morally acceptable.

Francione will have none of this: "Animal rights theory rejects the regulation of atrocities." Welfarists are only advocating "longer chains for the slaves." Animal defenders who mute their talk of rights and settle for mere reforms delude themselves when they think they can reach their long-term goal: an end to the human exploitation of animals via step-by-step improvements in the animals' treatment. The basic right of an animal not to be treated as property either is or is not acknowledged; it cannot be approached incrementally. It is obvious, for example, that better slaughtering methods will not lead to the cessation of animal-raising for food; but because that is the goal, "humane" methods of slaughter cannot ever be acceptable to a sincere animal advocate.

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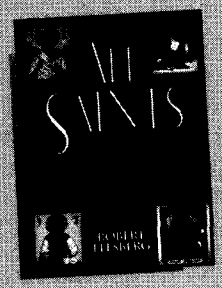

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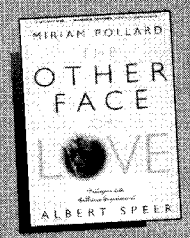

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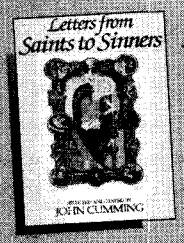

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Edited by MICHAEL CROMARTIE

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Francione notes that critics from within the movement have attacked the strict rights advocates like himself as "fundamentalists" who are wrecking any possible progress by insisting on an "all-or-nothing" approach. That really annoys him, of course, because it plays into the hands of the "research establishment"—the American Medical Association, the National Institutes of Health, and their kin—who call the animal rights people "extremists" in order to discredit them. The animal groups who have compromised rights for welfare have struck a bargain with the devil, and we all know who wins those deals. Abandoning their idealism for mere "compassion" leads to acceptance of policies that are indistinguishable from those who frankly use animals for experiments. The Animal Welfare Act of 1966, with its 1985 amendments, is a fraud, toothless and unenforced, used only by the biomedical establishment to lull the public into accepting its work. It is nothing but a license to the research community to continue business as usual. Nothing will change until we come to accept nonuse of animals, period—the absolutist position.

FRANCIONE'S MAIN PURPOSE in this book is to rally the dispersed animal advocacy movement around his rights thesis and against the welfarism which, he argues, is counterproductive. He is quite certain his own course is not quixotic, and, pace the critics, not an all-or-nothing policy, either. Rights theory can in fact provide an incremental progress toward abolition of institutionalized use of animals. One can abstain from using animal products oneself, use education to persuade others likewise (including nonviolent civil disobedience), or mount boycotts, all actions consistent with rights theory. One can also work for specific prohibitions against the use of certain animals, or against the use of all animals for certain purposes ("Don't wear furs"), treating the animal as it would be treated if it were no longer property, not just substituting one form of exploitation for another but actually eliminating a "piece of the exploitive industry."

It is evident that this is a book about politics and tactics, and that it is addressed to the general constituency of animal defenders. It is in that respect rather like a long internal memo. (It is also endlessly repetitive. A hard-nosed editor could have cut it by a third without losing anything of the argument.) But a reader who comes upon this book without a prior commitment to animal rights will be oddly distanced from the argument, even if considerably informed by it. All the varieties of opinion within the general animal advocacy movement are here, in excruciating detail. There is much te-

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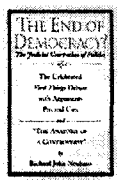

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dious, picky chat about who gets credit for what. One would have to be a concerned insider to care that much about the infighting among the various groups.

Those of us who come to this work from outside the family will be more interested in the rights argument itself, whose validity Francione simply assumes as background for his discussion of the accommodationist course of the movement. He does take care to distinguish his position from the utilitarianism of Peter Singer, who gets more credit than Francione thinks he deserves for the renewed momentum of the animal protection movement. Singer thinks it is all right to use animals as long as their interests receive equal consideration with humans. Both may be exploited for cause—if the consequences are good enough. He does not argue for animal "rights." Consequences are what count, and it is conceivable that the consequences of abolishing animal-raising for food might hurt humans in the aggregate more than hurt the animals killed, at least if the animals were raised and slaughtered in "humane" ways.

Thoroughly exasperated with Singer, whom he virtually accuses of hypocrisy (without using the word) in posing as the animals' champion, Francione casts his ethical lot with Tom Regan's deontological (nonconsequentialist) argument. Regan claims that animals do have rights, inherent rights based on the mere fact of being alive. "There is simply no nonspeciest way of differentiating human subjects-of-a-life from nonhuman ones, which have inherent value for precisely the same reason that the humans do: because their life matters to them apart from whether it matters to anyone else."

There is, of course, a lively debate about this argument, but Francione does not enter it. One can sense him skirting such hard questions as whether all living entities have rights ("at least some nonhumans," or "at least some animals can be regarded as rightsholders"), or whether characteristics or qualities or interests confer rights. Regan, Francione's moral exemplar, does in fact accept a hierarchy that allows him to kill lower forms of life but not mammals. But there is no hint of such important qualifications in this book.

WHATEVER THE hidden details of Francione's reasoning, he adheres to a theory of strict moral equivalence between humans and animals. He will countenance no use of animals for food (including dairy products) or clothing (including leather and wool) or experiments or entertainment, just as we would not use people for any of these ends. He does apparently keep dogs, although he refers to them as "the dogs who live with me," as if to disguise the pet "owner" he inevitably is.

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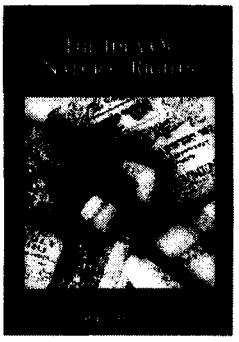

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The moral equivalence theory creates some startling analogies that a general reader is likely to reject out of hand: "The killing of healthy animals solely for the convenience of humans is morally similar to killing unwanted groups of people for reasons of social convenience." Animals raised for slaughter are like humans innocently imprisoned and tortured. We should not work for "humane" treatment of food or laboratory animals any more than we should pass laws requiring murderers to murder less violently, or men to rape women more gently, or slave owners to be kinder to their human property.

It is this last piece of moral equivalence that allows the book's title, a quotation from Frederick Douglass criticizing those who desire the freedom of slaves without the radical agitation of the abolitionists as wanting "rain without thunder." It is an application to the animal rights movement that readers not attuned to Francione's thesis will find jarringly inappropriate. It reminded me of another current book on environmental ethics, where a list of human sins against nature runs together "Nazis cremating millions of Jews, Americans slaughtering billions of passenger pigeons . . ." as if they were perfectly comparable.

This is the moral obtuseness produced by the advocates of animal rights, and the tragedy is that they don't even know it. There is surely better ethical wisdom available in the discriminate judgments that understand humans as the moral animal distinct from and ethically responsible for the lesser beasts, obligated particularly by our religious belief in the goodness of creation to treat lower creatures with kindness and respect, insofar as that is permitted by a realistic commitment to the priority of human welfare.

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The Bible Tells Me So

PEOPLE OF THE BOOK: CHRISTIAN IDENTITY AND LITERARY CULTURE. By DAVID LYLE JEFFREY. *Eerdmans. 396 pp. $37 cloth, $25 paper.*

***Reviewed by* Alan Jacobs**

IN THE COMMON caricature, all disputes between Catholics and Protestants can be reduced to a dispute over the role of Scripture: the Protestant cries *Sola Scriptura*; the Catholic understands Scripture to be only part of a comprehensive Church tradition. Like all good caricatures, this helps us by exaggerating a genuine truth. Even at this late date, some Protestants still need to learn that understanding without tradition is not possible, while some Catholics still need to learn that the Bible has not merely embodied but created the tradition

ALAN JACOBS *is Associate Professor of English at Wheaton College.*

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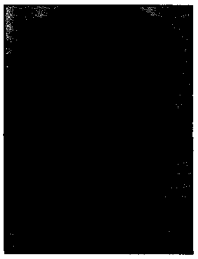

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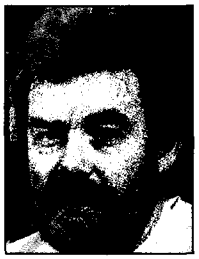

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which they embrace.

The Canadian medievalist David Lyle Jeffrey has devoted much of the last decade to a pair of scholarly projects for joining our understanding of the relations between the Bible and tradition—not just Tradition in the ecclesial sense, but also the tradition that constitutes culture (tradition, one might say, in the Gadamerian sense). The first of these projects is the magisterial *Dictionary of Biblical Tradition in English Literature*, which appeared in 1992. As Jeffrey wrote in his editorial preface to that volume, "To understand something of the Bible, and of its transmission in and through English literature, is to reckon sympathetically with the development of English cultural consciousness in its richest and most coherent levels of expression." To put this claim in somewhat different terms, it would be ludicrous to think that one could understand English literature or culture without an adequate knowledge of, first, the English Bible itself, and second, the ways in which the Bible had been appropriated by generation upon generation of writers.

Of course, as Jeffrey would be the first to note, the shaping of literary consciousness is scarcely the most important cultural work that the Bible has done. And in this new volume, *People of the Book*, Jeffrey undertakes his second project, explaining some of the ways in which the Bible's entry into human cultures has profoundly reoriented, redefined, even remade those cultures. For Jeffrey, the Bible is the most powerful agent of tradition-making the world has ever seen.

He pursues this claim by looking at a variety of cultural situations: At the outset of Christian history, the Church Fathers groped toward an understanding of how the words of Scripture make culture, while closer to our own time and place, the Bible has played a pervasive role in forming "the American myth" and doing so in ways dimly understood by those most indebted to that myth. (Jeffrey cites as notable exceptions to that dimness of understanding such modern figures as Flannery O'Connor, Walker Percy, and, especially, Wendell Berry.) The book actually begins with a look at how recent key debates in literary theory, particularly those surrounding deconstruction, owe both their logic and their set of concerns to the biblical view of language and to the developmental exploration of that view in patristic and rabbinical thought.

Perhaps the most interesting chapters of the book consider the Middle Ages—and this is not just because Jeffrey is by trade a medievalist. Rather, the Middle Ages provide for us the best and most detailed picture we have of a completely pagan culture that is gradually transformed, remade, by the Word. The heart of this book lies in three compelling chapters entitled "Evangelization and Literacy," "The Book Without and the Book Within," and "Authorial Intent and the Willful Reader." What we see in these chapters is a long, slow process of change, in which the Bible first appears to Germanic pagans as not merely an alien but an incomprehensible document, the only parts of which that seem even remotely commensurable with their lifeworld coming from the Old Testament. Gradually, powerful Christian minds—the most important of whom in England was the Venerable Bede—strive not to make the Bible relevant to pagan culture, but to make pagan minds relevant to biblical culture. This is of course a perpetual task for the Church: as Jeffrey asks near the end of his book, should we not maintain "an active category for texts for which understanding comes about not because we interpret the text, but because, when read accountably, the text interprets us"?

In any event, through the labors of scholars, poets, and translators Scripture begins to be comprehensible to pagan culture, which means that it begins to be recognized for

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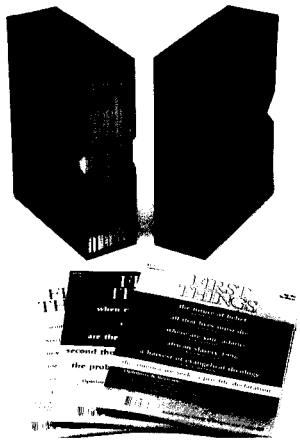

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what it is, a scandal and a stumbling block. Whatever answer they give, each generation of Christians must ask the same question: "What has Athens to do with Jerusalem?" (Tertullian); "What has Horace to do with the Psalter? or Virgil with the Gospel? or Cicero with the Apostle?" (Jerome); "What has Ingeld to do with Christ?" (Alcuin of York). And the answer to this question can often be shocking to the pagans. Jeffrey gives a brilliant account of the great early Anglo-Saxon poem "The Dream of the Rood" in the context of the prevailing norms of heroism and achievement in pre-Christian England. The key line of the poem—"Crist waes on rode" (Christ was on the cross)—"to the pagan mind tersely summarizes a hideous contradiction of any earthly glory." But for the Christian, unaccountably, the cross is the sign of ultimate victory. "The centrality of the Christian paradox is revealed in this poem as a radical redefinition of Anglo-Saxon notions of the heroic: the cross declares to the dreamer that what transcends in glory any human notion of the heroic is the divine commitment to mercy and reconciliation. This means that honor must now be reconceived in a fashion which can do no less than turn a tribalistic pagan culture inside out."

The Book thus pronounces an authoritative demand, and those who accept that demand must undergo a profound internal transformation. Jeffrey cites the conversion scene in Augustine's *Confessions* as the best example of how someone "through the medium of a book . . . affirms the authority of creation's Author" and thereby begins to allow God to write his book within the redeemed sinner. Such transformation, however, can never be complete in this world; as sinners we all remain, to one degree or another, "willful readers," struggling to submit our rebellious will to the will of God as expressed in his Word. Jeffrey provides a wonderful picture of Chaucer's Wife of Bath as just such a willful reader, who determines that she will be the "auctoritee" who determines the meaning of the biblical text. But of course all of us are, at least some of the time, the Wife of Bath. Hers is not a peculiar sinfulness, but the condition of fallen (and hence "willful") humanity.

I have a few quibbles with the book, chief among them that Jeffrey has a tendency to judge the Church Fathers by their best representatives, and those representatives by their least disturbing work: his picture of patristic thought about literary culture might look very different if he had given detailed consideration to figures other than Augustine and Jerome, or if he had emphasized passages in their work (especially Jerome's) that make them seem less broad-minded. This tendency in it-

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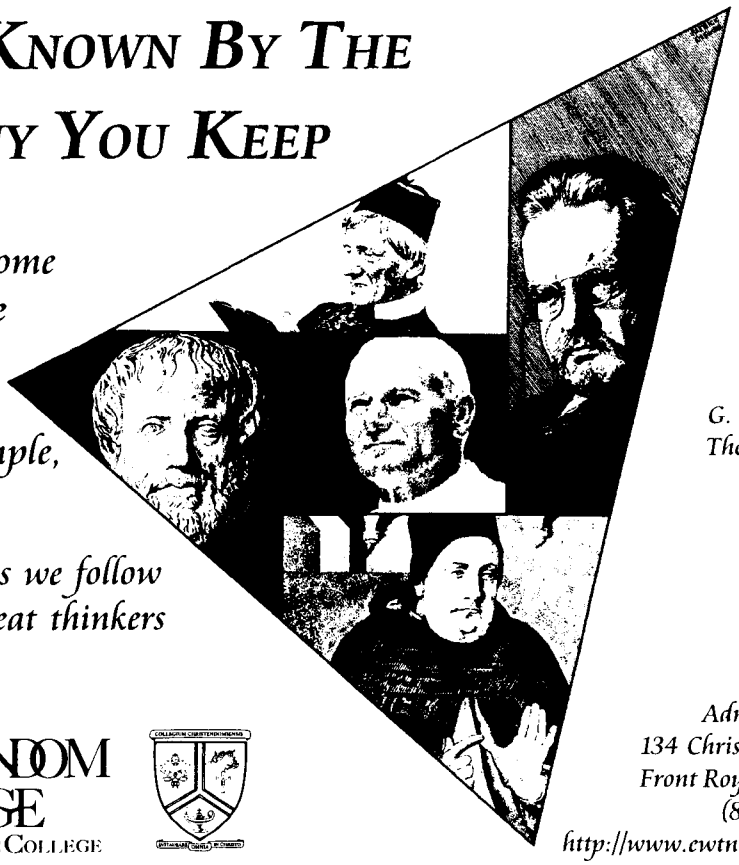

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self would not be troubling, except that he doesn't always extend the same indulgence to the English Puritans. If the culturally sophisticated Augustine and Jerome are seen here as the patristic norm, the equally admirable Richard Baxter is presented as a deviation from a narrowly reductionistic Puritan norm. In fact, each of these figures is pretty much equally atypical. Intelligent charity, which all three men exhibit, is always and everywhere in short supply.

But this is only a quibble. Jeffrey has written a fascinating and provocative book, one that deserves wide reading not only among Christians but also among those literary scholars and cultural historians for whom the power of the Bible is an unfortunate historical accident they would prefer to neglect or forget. If this book only made it harder for Protestants to see the Bible as a textual artifact independent of tradition and harder for Catholics to see it as merely the product of tradition, it would be worthwhile indeed. But more than that, it makes a powerful case for believing that Scripture still constitutes much of our culture in ways that are inescapable. The Bible, David Jeffrey tells us, may be scorned, repudiated, or ignored. But it continues to shape the identities of even its bitterest opponents, and most of what they hold most dear comes from it.

Kitchen Table Talk

THE ASSAULT ON PARENTHOOD: HOW OUR CULTURE UNDERMINES THE FAMILY. By DANA MACK. *Simon & Schuster. 368 pp. $25.*

***Reviewed by* Nancy R. Pearcey**

THE PRINCIPAL of a Reform Jewish Sunday school in Connecticut realized she had made a mistake. After researching diligently to pick a textbook for her high-school class, she had selected one that coached students in "decision-making strategies" regarding sexual involvement and drug use. But strangely enough, she discovered, "When these kids came to class they didn't want to talk about sex or drugs." What *did* they want? "They wanted to talk about God." And so, the principal said ruefully, her Sunday school class ended up discussing "religious philosophy."

Imagine that. Of course, any parent could have prevented the principal's false start—if she had thought to ask. Parents are generally impatient with churches that push a therapeutic curriculum instead of addressing young people's genuine spiritual hunger. The story illustrates the tug-of-war going on between parents and professionals over the best way to raise children, the subject of this first book by Dana Mack. And she's worried that the professionals are winning.

Mack is a parent and an affiliate scholar at the Institute for American Values. Her colleague, Barbara Dafoe Whitehead, has observed that the family is the subject of two very different conversations—one around the conference table, among policy wonks and economists (whose views are extensively published and cited), the other around the kitchen table, among parents (whose views are rarely publicized). Mack interviewed some 250 parents across the country in order to give a public voice to the kitchen-table conversation.

Mack started out with the idea of uncovering the causes of the declining well-being of American children—rising rates of crime, drug abuse, teen pregnancy, and so on. She concluded that the main cause is the declining power and status of parents. Over the past century (most rapidly in recent decades), there has been a transfer of power from parents to other institutions, such as schools, government, and the market. Many of these institutions once supported parents in the task of child-rearing; today they often compete with parents. Mack traces the effects of a parent-hostile climate in chapters on law, work, education, and the media. (Interestingly, in interviews many parents identified churches as the only remnant left of a supportive communal life.)

PROFESSIONALS HAVE responded to the

NANCY R. PEARCEY *is Fellow and Policy Director of the Wilberforce Forum.*

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crisis of child-rearing by pressing for increased institutionalization of children—more parenting seminars, preschools, day-care centers, after-school activities, and counseling and therapy services. But parents refuse to be mollified by these offerings, seeing them as little more than professionally constructed substitutes for organic family and neighborhood life. What parents themselves want is more time with their families and more control over their children's social environment, e.g., school and neighborhood.

As Mack puts it, the proliferation of social services may stem from a good-intentioned attempt to help children, but it also reinforces a predilection toward child-rearing by professionals—which parents viscerally resent. Even some of the most compassionate works on the crisis of childhood today (including Hillary Rodham Clinton's *It Takes a Village*) "betray the fallacious assumption that in the modern world it is up to institutions, and not up to parents, to rear children," Mack writes. Typically "these books enjoin government to *relieve* parents of their child-rearing obligations, rather than to support them in these obligations."

Sadly, even parents sometimes absorb the attitude that professionals do a better job than they can, a crisis of confidence that Mack fails to address, though it comes out in some of her anecdotes—e.g., sex education battles where parents were persuaded to support educators' condom distribution schemes.

If Mack's arguments sound familiar, they should. She draws heavily on the work of well-known scholars and writers such as Sylvia Ann Hewlett, David Blankenhorn, David Popenoe, William Mattox, Michael Medved, and Mary Ann Glendon. Mack's policy recommendations likewise form a familiar list: tax breaks for families with young children, home-based work, tougher decency standards for the media, parent-driven education reform, tighter legal definitions of child abuse, and an end to no-fault divorce.

Where we might have expected new material is from Mack's interviews with parents: Her research might have uncovered fresh data to back up what the theorists are saying. But, surprisingly, Mack offers no quantitative analysis of her interview results, nor does she reveal how she selected the 250 parents, so that we have no idea how representative their responses are.

At the least, we might have expected the interview material to yield vivid, first-hand stories to bring these familiar issues to life. But alas, though Mack provides several colorful anecdotes, the vast majority of her findings are stated in flat generalizations: e.g., "Many parents I've talked to contend that the secret to better outcomes is a more authentic and traditional interaction between parents and children."

Even direct quotations from parents are discouragingly banal: "Nobody's home anymore!" says Ed, a father of three. "There are so many outside influences that never existed before," laments Steve, a New Jersey father. The reader begins to wonder why Mack found so few parents capable of sustaining an intelligent argument.

Still, the book earns high marks for its vigorous support for parents. Mack writes in a clear, forceful style, sometimes tilting toward stridency and one-sidedness. This is definitely advocacy journalism. The book is a useful introduction for a general audience, something you might give to a nonpolitical friend who can't understand why you are so exercised over the contraction of parental rights, the abysmal state of education, the perils of day care, the materialism of advertising, and all the other family issues. I think I'll give it to my Sunday school principal.

BRIEFLY NOTED

The Cambridge Companion to the Bible. By Howard Clark Kee, Eric M. Meyers, John Rogerson, and Anthony J. Saldari. *Cambridge University Press. 616 pp. $45.*

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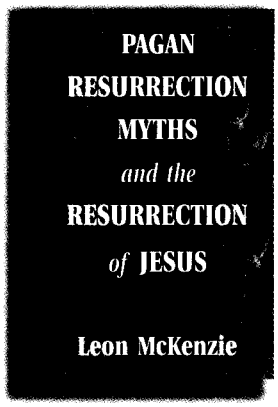

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making of books on the Bible there is no end, and the reading thereof is a weariness to the flesh. But this companion has several features that make it stand out from the flood of others. Avoiding the usual dictionary format of alphabetized listings—a layout that is useful only for specific queries or haphazard reading—the *Cambridge Companion* is really a quasi-chronological narrative of the various theological worlds inhabited by the biblical authors. Throughout such narrative chapters as "The World of Israel's Historians" or "Christianity Responds to Formative Judaism" (to name only two of the best), there are scattered short sidebars on such important topics as "Son of Man" and "Israelite Law in its Ancient Near Eastern Context," for consulting by the casual reader. Not set out alphabetically but placed in their most fitting chapter, these sidebars and boxed explanations can be found by the reader with a specific query through an extensive index in the back. This is the only such work I know that would be equally serviceable in a reference library and a classroom: a perfect textbook for a basic one-semester course on the Bible. One might observe, however, that undergraduates on a budget would no doubt prefer a paperback edition.

— Edward T. Oakes, S.J.

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CELTIC CHRISTIANITY AND NATURE: EARLY IRISH AND HEBRIDEAN TRADITIONS. By MARY LOW. *Edinburgh University Press. 232 pp. $23.*

Mary Low has written a clear and convincing account of the place of nature in early Irish Christianity. Refreshingly free of the New Age cant of pop Celticism, Low argues against the Romantic view of the "poet-seer" contemplating nature with "supernatural vision," suggesting that Celtic Christian poetry approaches nature instead through "the everyday faculties of memory and imagination." Low presents this relation to nature as the common ground that enabled the fusion of pagan and Christian traditions in Celtic Christianity. Writing from a "disaffection with the modern Western mind-set," Low nonetheless counters the contemporary "rejection of Christianity" with a recovery of "a traditional but neglected Christian cosmology" that emphasizes intimacy "between God, nature, and human beings." Low suggests this view of nature might serve Christianity today in its encounter with native religions in Asia and Africa. The weakness of the book lies in the analytic framework of "comparative religion." The missionaries and monks of early medieval Ireland sought common ground with native Celtic traditions, but they did not link Christianity and paganism through such anthropological concepts as "primal religion." Syncretism incorporates local traditions and stories into Christianity; the sociology of religion interprets Christianity as one among many manifestations of "the religious." The former offers a model for contemporary Christian evangelism in the Third World; the latter leads to the nihilism of multiculturalism.

— Christopher Shannon

IMAGINED WORLDS. By FREEMAN DYSON. *Harvard University Press. 216 pp. $22.*

Freeman Dyson made major contributions to particle physics in the 1940s and '50s, and became well-known in later years for futuristic speculations. Now modestly calling himself "an old man pretending to be a sage," Dyson believes the next century will bring humanity almost complete genetic control over itself. His attitude toward this is curious and contradictory. He regards as greatly prophetic J. B. S. Haldane's *Daedalus, or Science and the Future* (1923), with its message that "the progress of science is destined to bring enormous confusion and misery to mankind unless it is accompanied by progress in ethics." And yet, though he claims to make this "unwelcome" message his own, he declares in his final chapter (entitled "Ethics"), "The idea of improving the human race by artificial means . . . conjures up visions of Nazi doctors sterilizing Jews and killing defective children. . . . But [it] will come . . . whether we like it or not. . . . When people are offered technical means to improve themselves and their children, . . . the offer will be accepted." One of William Blake's drawings, with the title "Aged Ignorance," shows a winged child running naked in the sun and an old man holding a large pair of scissors to clip the child's wings. The drawing, Dyson declares, is an image for our times. "The winged child is

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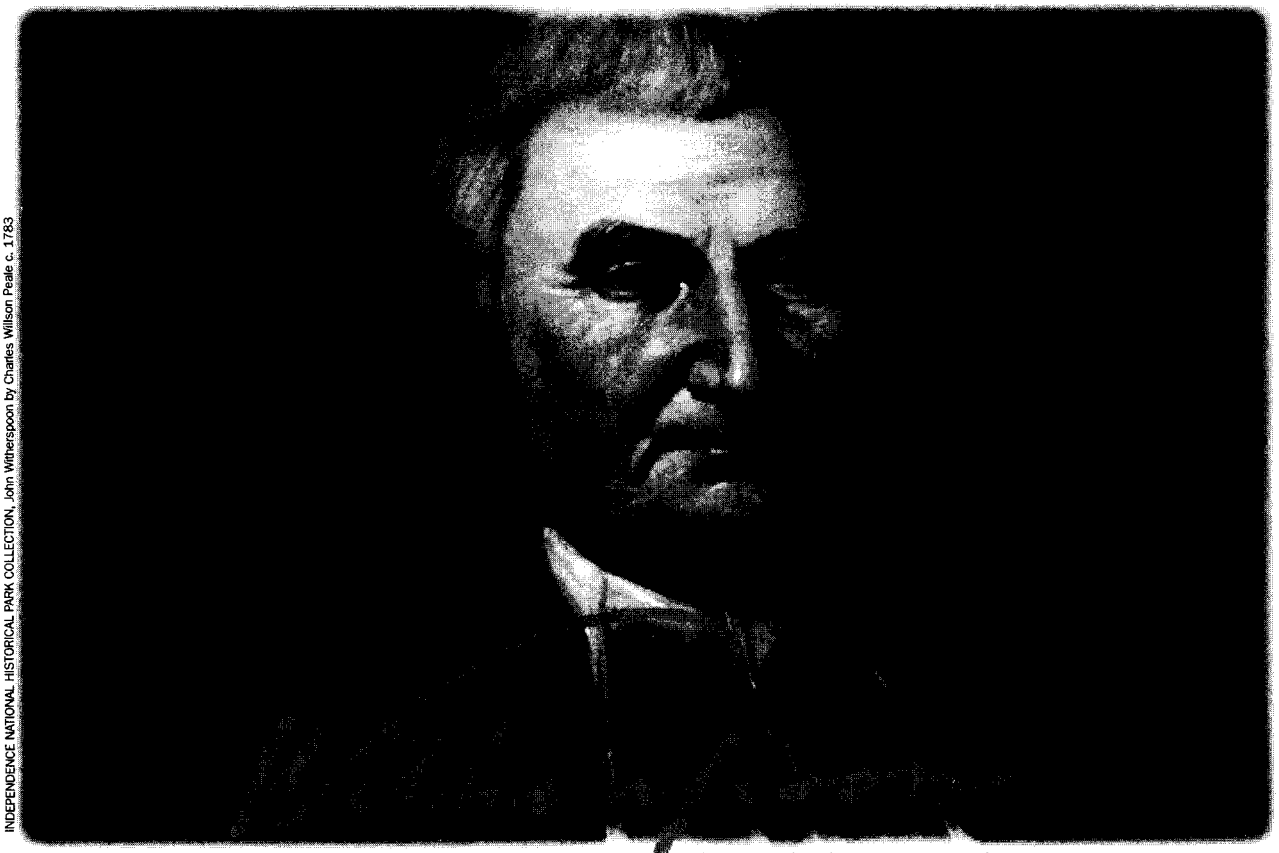

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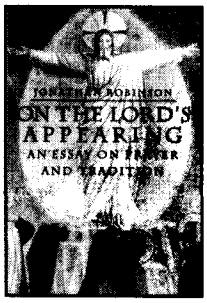
Jonathan Robinson



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human life. . . . The old man is our existing human society, shaped by ages of past ignorance. . . . Caution is justified . . . [but] in the long run social constraints must bend to new realities. Humanity cannot live forever with clipped wings." Dyson is a humane man and a humanist, but his humanism, like that of many scientists, has a weakness. For if our loyalties—like our fears and hatreds and injustices—are merely atavisms from which with science's help we can free ourselves, then on what basis can we defend our loyalty to what is human?

— *Stephen M. Barr*

THE MEASURE OF REALITY: QUANTIFICATION AND WESTERN SOCIETY, 1250-1600. By ALFRED W. CROSBY. *Cambridge University Press. 245 pp. $24.95.*

It's hard to decide which is the greater achievement of this author: his success at showing the importance of medieval science, or his success at making it interesting. Whether tracing the history of the numeral 6 or untangling the politics of calendar-making, Crosby has produced a fine historical work that attempts to explain the peculiar rise of Western civilization to world importance in the late Middle Ages. His answer—a new, more quantitative approach to reality, fostered by the medieval university system and the rise of urban commerce—is quite traditional. His innovation lies in the details, arguing that the decisive cause of this new approach to reality was the advance in visualizing space and time as impersonal units of only utilitarian significance, capable of being organized on charts and graphs. No longer did historians and cartographers, for example, have to think of the number three as possessing any supernatural, qualitative meaning: it was just the number three, no more, no less. Crosby—a geography and history professor at the University of Texas, Austin—shows both how these new mathematical practices influenced other disciplines and how the commerce in merchandise influenced the commerce in ideas. His argument for the importance of medieval science might have been even more persuasive had he shown the intersection of this new mathematics and commerce with the particular events and broad movements of medieval political history. But of that science itself, this is an engaging and important account.

— *Gregory M. Eirich*

THE OXFORD DICTIONARY OF THE CHRISTIAN CHURCH. Edited by F. L. CROSS and E. A. LIVINGSTONE. *Oxford University Press. 1,786 pp. $125.*

Break out the bubbly and raise a toast to the late F. L. Cross, and another to his successors in continuing this monumental publishing achievement. Great reference works do not always fare well at the hands of those who get to revise them. Witness, for instance, the betrayers of Fowler and Bartlett, and of the editors of the eleventh edition of the *Encyclopaedia Britannica*. Not so with Dr. Livingstone and his many coworkers. One has no doubt that Dr. Cross would be immensely pleased with this third edition of *The Oxford Dictionary of the Christian Church*, and would likely think it, as we do, an improvement over his first effort. The first edition appeared in 1957 and immediately became an indispensable reference. The second edition of 1974, although updating many entries and adding new ones, seemed not quite up to the first, so many readers no doubt kept both on hand, just in case. But this third edition is simply splendid. It is considerably larger, and more ecumenical in the best sense of that term. Notably more attention is paid developments in the U.S. and other countries outside the Anglican orbit in which this dictionary was born. Without losing its careful attention to history (especially the patristic sources), it includes exquisitely judicious treatments of such contemporary topics as feminism and liberation theology, treating everything within the context of the Great Tradition of Christian orthodoxy. The expanded bibliographies on subjects ranging from

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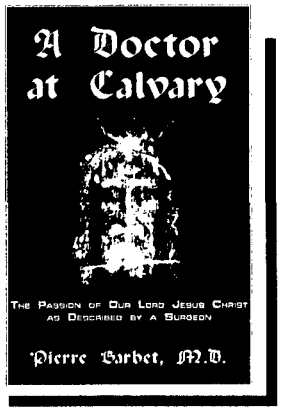

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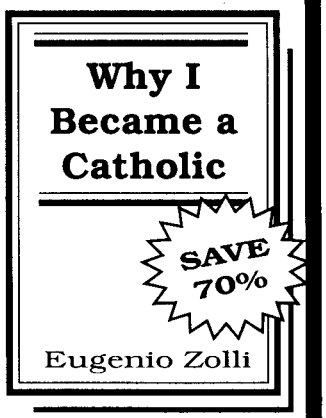

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Zolli was a prominent Scripture scholar and a brilliant writer. During the Nazi occupation of Rome, with a price on his head, he went under cover to the Vatican to obtain the Holy Father's protection for the Jewish community. His conversion made headlines, but the post-war world quickly consigned him to oblivion. He died in poverty in 1956. Zolli's vision, courage and deep faith — and his vivid, highly personal writing — make him one of the most inspiring Catholic figures of the century.

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SISTERS IN CRISIS: THE TRAGIC UNRAVELING OF WOMEN'S RELIGIOUS COMMUNITIES. By ANN CAREY. *Our Sunday Visitor (Huntington, IN). 367 pp. $19.95 (+$3.95 postage).*

In 1965, more than 100,000 sisters taught in Catholic schools. Today there are fewer than 13,000. Much the same holds in hospitals, social services, and innumerable other apostolates that once made women's religious communities a force to be reckoned with in both Church and society. Today, the remnants of those communities are chiefly factions of cantankerous dissidents to be put up with. Ann Carey is a veteran journalist and she recounts in a generally restrained and non-polemical way the astonishing story of the self-destruction of community after community. She details the embrace of the sundry madnesses of radical feminism and other liberationisms that induced thousands of sisters to abandon personal vows and betray institutional trusts. She carefully surveys the literature that tries to explain what happened, but ends up on a note of sad puzzlement. She acknowledges the problems with many communities prior to the Second Vatican Council, but is at a loss to understand why the post-conciliar "renewal" turned so viciously on the very institutions that were presumably being renewed. There is great sadness and puzzlement in the story, and she names the names of those who have much to answer for, especially the progressive priests and theologians whom the sisters followed so uncritically. Yet it should not come as a surprise that when the virtue of obedience is declared a vice, when self-surrendering service is pitted against self-fulfillment, and when prayer is denigrated as an escape from reality, the very raison d'être of the religious vocation quickly evaporates. As the author notes, some religious communities have drawn the appropriate lessons and are again flourishing. But they are decidedly in the minority. *Sisters in Crisis* is a sobering account of what happened when the criteria of renewal were derived not from the life of the Church but from the enthusiasms of the cultural locust years of the 1960s. Highly recommended.

JAMES DOBSON'S WAR ON AMERICA. By GIL ALEXANDER-MOEGERLE. *Prometheus. 306 pp. $25.95.*

A disgruntled former employee of Focus on the Family tries to get even. Dobson, he charges, is guilty of "sexism, racism, and homophobia," and he also criticizes "employees who [try] to spend time with their families." Oh, dear. To judge by this labored indictment, the worst to be said about James Dobson is that he might make uncomfortable those who are less squeaky clean than he apparently is.

HUNGRY GHOSTS: MAO'S SECRET FAMINE. By JASPER BECKER. *Free Press. 352 pp. $25.*

A story that both grips and chills. To this day, the great famine of 1958 to 1962, in which more than thirty million Chinese were killed by Maoist madness, is overshadowed by the Cultural Revolution that followed. Some Western "experts" on China were ignorant of the famine; many others knew about it and, fearful they would be denied access to China, publicly denied it. In this connection, John K. Fairbank of Harvard, the dean of American sinologists, brought particular shame upon himself and those he influenced. The truth was told then by maverick scholars such as Ivan and Miriam London, who paid a steep price in the academy for their impertinence. Becker's very readable account of mass suffering, including widespread cannibalism, underscores the frightening fragility of social orders. Far from being giants on the stage of history, Mao and his ilk come across as adolescent egomaniacs, puffed up with fantasies about forcing the transition to the Communist utopia within a few months, and totally indifferent to the millions of lives sacrificed on the altar of their make-believe. Highly recommended to readers with strong stomachs.

NEARER, MY GOD: AN AUTOBIOGRAPHY OF FAITH. By WILLIAM F. BUCKLEY, JR. *Doubleday. 302 pp. $24.95.*

Admirers of William Buckley, political and social critic, may be inclined to view his Catholicism as a tolerable idiosyncrasy. Admirers of William Buckley, unapologetic Catholic, are sometimes distressed by what they view as his idiosyncratic Catholicism. To say that Mr. Buckley is unapologetic does not mean that he is above trying to explain what he believes, but the present work is more a testimonial than an exercise in apologetics. In conversation with theologian friends, including the editor in chief of this journal, Buckley joins exploration to testimony, elegantly moving around questions of spiritual moment and then zeroing in on his rock-like convictions. He ranges widely, from boyhood formation and what has happened to religion and morals in the prep school, to papal infallibility and what it surely cannot mean, to a poignant reflection on the faith-filled dignity of his mother as she condescended to the inevitability of aging and death. This is, at once, an intensely personal and intensely cerebral book, a revelation of the deepest self without a touch of the shameless exhibitionism that has come to mark contemporary autobiography. Fans of Mr. Buckley will be confirmed in their devotion to him, and, much more important, may be renewed in the encounter with the One who is the object of his deepest devotion.

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THE PUBLIC SQUARE

A Continuing Survey of Religion and Public Life

Richard John Neuhaus

The Approaching Century of Religion

Shortly before he died on November 23, 1976, André Malraux said, "The twenty-first century will be religious or it will not be at all." I'm not sure what Malraux meant by it, but it is one of those oracular pronouncements that have about them the ring of truth. At the threshold of the Third Millennium, it seems that the alternatives to religion have exhausted themselves. That is true of the materialistically cramped rationalisms of the Enlightenment encyclopaedists, which, along with ideological utopianisms, both romantic and allegedly scientific, have been consigned, as Marxists used to say, to the dustbin of history. The perversity of the human mind will no doubt produce other ideological madnesses, but at the moment it seems the historical stage has been swept clean, with only the religious proposition left standing. That is certainly the intuition that informs John Paul II's repeated exhortation, "Be not afraid!"—an exhortation addressed to the entire human community.

It is an intuition that some condemn as "triumphalistic." But one can make the case that, as a world force, Christianity offers the only coherent, comprehensive, and compelling vision of the human project. Except for the others. The chief other is Islam. Christianity and Islam are the two religions that are large, growing, and universal in their culture-forming ambitions. Not without reason are thinkers in the West paying increasing attention to Islam. Which brings me to a new book that has already received notice in these pages, *The Decline of Eastern Christianity Under Islam: From Jihad to Dhimmitude* by Bat Ye'or (Fairleigh Dickinson University Press, 522 pp., $45 cloth, $19.95 paper).

We recently sponsored a meeting to discuss the book with Bat Ye'or, and it has been much on my mind. She is a very impressive scholar, a Jew born in Egypt who now lives in France, where the book was first published in 1991. She thinks the West has not begun to understand the challenge of Islam, that Europe is afraid to understand it, and that the best hope rests with Americans who still sense that they are part of a Christian—i.e., Judeo-Christian—culture.

On the challenge of Islam, the French legal scholar and Protestant theologian Jacques Ellul strongly agrees. He wrote the foreword to the book, one of the last things he wrote before he died. "It is most important to grasp," wrote Ellul, "that the jihad is an institution in itself; that is to say, an organic piece of Muslim society. . . . The world, as Bat Ye'or brilliantly shows, is divided into two regions: the *dar al-Islam* and the *dar al-harb*, the 'domain of Islam' and 'the domain of war.' The world is no longer divided into nations, peoples, and tribes. Rather, they are all located en bloc in the world of war, where war is the only possible relationship with the outside world. The earth belongs to Allah and all its inhabitants must acknowledge this reality; to achieve this goal there is but one method: war." The Koran allows that there are times when war is not advisable, and a momentary pause is called for. "But that," writes Ellul, "changes nothing: war remains an institution, which means that it must resume as soon as circumstances permit."

While grateful for Ellul's endorsement, Bat Ye'or says he puts the matter somewhat more starkly than she would. In France and in Europe more generally, there is a growing anti-immigrant, and specifically anti-Muslim, sentiment, and she wants to carefully distance herself from that, which does her honor. On the substantive questions, however, the book leaves no doubt that she and Ellul are of one mind. In the Islamic view, Jews and Christians are "Peoples of the Book," which distinguishes them from other infidels. Where Jews or Christians are in control, there is *dar al-harb*, the domain of war. Where Islam has conquered, Jews and Christians are *dhimmi*, meaning subject people who live under the *dhimma*, which is the pact or treaty granted by the Prophet

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Muhammad to the Peoples of the Book whom he conquered.

What Really Happened

The Decline is a big book, sometimes rambling but always informative. For many readers it will be an eye-opener, not because it is revisionist history but because it tells the story straight, thus countering the Islamophile histories that have dominated Western thought for so long. About half the book is given to a telling of the story, and the second half to a fascinating collection of documentary evidence from the beginning of Islam to the present. Most of the standard texts speak about the "rise" of Islam in the seventh century, and relate its spread as millions "embraced the new faith." This is usually joined to positive comment on Islam's "tolerance" of non-Muslims, especially as contrasted with the atrocities of the Christian powers with their crusades and "expulsion" of minorities from Europe. This, Bat Ye'or persuasively demonstrates, is a radical distortion of what happened. Islam's spectacular spread was brought about by brutal military conquest, rapine, spoliation, and slavery, joined to a regime of "dhimmitude" that was based on deep contempt for the subject infidels, including the Peoples of the Book.

She begins by reminding us of the Christian civilizations of the Middle East (what Europeans call the Near East) and North Africa—the world of, for instance, St. Augustine. "On the eve of the Islamic conquest, a certain degree of homogeneity emerged from the civilization of the Near East and North Africa, despite the bloody religious conflicts. Heir to Hellenistic culture, it had assimilated the spiritual values of Judaism via Christianity. Although Greek and Pahlavi were the official languages of the Byzantine and Persian empires, respectively, the native inhabitants of Babylonia, Mesopotamia, Syria, and Palestine spoke and wrote Aramaic. Being a vernacular, liturgical, and literary language, Aramaic was used by the Jews to compile juridical works such as the Talmud and by the Christians to write the historical and theological works of the Nestorian and Monophysite Churches in its Syriac version. In Egypt, the native inhabitants used Coptic, their spoken and written national language." In short, the "rise of Islam" did not happen in a vacuum. Islam violently displaced the vibrant, if internally conflicted, Christian culture of a large part of the then known world.

Nor was Islamic aggression limited to North Africa and the Middle East. "For centuries after its conquest in 712, Spain became the terrain par excellence for the jihad in the West of the *dar al-Islam*. . . . Breaking out of Arabia and from the conquered regions—Mesopotamia, Syria, Palestine—these successive waves of [Muslim] immigrants settled in Spain and terrorized southern France. Reaching as far as Avignon, they plundered the Rhone valley. . . . In 793, the suburbs of Narbonne were burned down and its outskirts raided. Calls to jihad attracted the fanaticized hordes in the *ribats* (monastery-fortresses) spanning the Islamo-Spanish frontiers. Towns were pillaged and rural areas devastated."

The Painful Particulars

Of course that was a nasty era. Islam did not invent the massacre or enslavement of vanquished peoples. Burning, pillage, spoliation, and the imposing of tribute were practiced by most of the armies of the time, whether Greek, Latin, or Slav. "Only the excess," says Bat Ye'or, "the regular repetition and the systematization of the destruction, codified by theology, distinguishes the jihad from other wars of conquest or depredation." After the first great wave of conquests in the seventh and eighth centuries, Islam gained new force with the accession of the Ottoman Turks. "Possessing an intrepid army and remarkable statesmen, the Ottomans were able to take advantage of the lack of unity and economic rivalries in the Christian camp. The final conquest of the Balkan peninsula was undertaken from 1451 by Mehmid II and his successors. Constantinople was encircled and fell in 1453; Serbia was conquered in 1459; then Bosnia and the Empire of Trebizond in 1463, and Herzegovina in 1483. Turkish expansion continued in Europe with the conquest of Wallachia, Moldavia, and eastern Hungary and was finally checked at Vienna in 1683 and in Poland in 1687." The particulars are worth mentioning, for they underscore the continuity of the jihad and its impact on the world of today, as we are reminded by, for instance, the presence of U.S. troops in Bosnia.

Much of the book is a detailing of the practices of *dhimmitude*, correcting the conventional wisdom about Islamic "tolerance" of religious minorities. The *dhimmis* were treated variously in different times and places, depending upon what the Islamic rulers thought expedient. Bat Ye'or emphasizes how Christian disunity played into the hands of their conquerors. Not only the conflicts between East and West, but also between Monophysites, Nestorians, Chaldeans, and others led to many instances in which Christians collaborated with their Muslim masters against other Christians. The regime of *dhimmitude* was marked by a trade in hundreds of thousands of slaves, as well as minute regulations requiring Jews and Christians to wear distinctive clothing, and excluding them from any access to the law whereby they might seek redress against Muslim cruelties and injustices. The entire system was pervaded by a teaching of contempt toward the infidels.

She notes the irony that the Koran and other sacred texts of Islam had no specific rules for

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treating conquered infidels, so Muslim rulers in many cases simply took over the rules that the now-conquered Christians had previously applied to heretics. This is not the only way in which "Islamic civilization" was derived from the vanquished. "The historical role of these hordes drained off from the *dar al-harb* by the conquering Muslim armies should not be underestimated. The Christians and Jews driven from the Mediterranean countries and Armenia—scholars, doctors, architects, craftsmen, and peasants, country folk and town dwellers, bishops, monks, and rabbis—belonged to more complex civilizations than those of the Arab or Turkish tribes. The military and economic power of the caliphs was built up and the process of Islamization carried out through the exploitation of this slave manpower."

Islamic Civilization

Bat Ye'or emphasizes how little that is admired in Islamic civilization is original, how much of it is derivative. Even the great Dome of the Rock in Jerusalem is a design taken from Byzantine Christianity. The *dhimmi* peoples made available to the culturally underdeveloped Arabs the knowledge that had once made their own cultures great. "Zoroastrians, Jacobites (Copts and Syrians), Nestorians, Melchites, and Jews translated into Arabic treatises on astronomy, medicine, alchemy, and philosophy, as well as literary narratives and stories. This work necessitated the invention of new words and the forging of the Arabic language and grammar into new conceptual molds, not only philosophic, scientific, and literary, but also administrative, economic, political, and diplomatic. . . . The first known scientific work in Arabic was a treatise on medicine, written in Greek by Ahrun, a Christian priest from Alexandria, and translated from Syriac into Arabic in 683 by Masarjawayh, a Jewish doctor from Basra (Iraq)." And so it was with many other "Islamic" cultural and scientific achievements.

The common view is that, during the so-called dark ages of European Christendom, Islam preserved the philosophical, literary, and scientific wisdom of the classical period. Bat Ye'or offers a somewhat different perspective. "And yet *dhimmitude* reveals another reality. Here are peoples who, having integrated the Hellenistic heritage and biblical spirituality, spread the Judeo-Christian civilization as far as Europe and Russia. Jews, Christians, and Zoroastrians, conquered by nomadic bands, taught their oppressors, with the patience of centuries, the subtle skills of governing empires, the need for law and order, the management of finances, . . . the sciences, philosophy, literature and the arts, the organization and transmission of knowledge—in short, the rudiments and foundations of civilization." Later, some of those whose civilizations had been ravaged by the barbarians went into exile. "The elites who fled to Europe took their cultural baggage with them, their scholarship and their knowledge of the classics of antiquity. Thenceforth, in the Christian lands of refuge—Spain, Provence, Sicily, Italy—cultural centers developed where Christians and Jews from Islamized lands taught to the young Europe the knowledge of the old pre-Islamic Orient, formerly translated into Arabic by their ancestors." By this account, then, the classical heritage that was presumably preserved by Islam was in fact rescued from Islam by those who fled its oppression.

Bat Ye'or is at pains not to appear anti-Islamic. At one point she goes so far as to say she refuses to make any "value judgments." But the story she tells speaks for itself. However tortured the historical relationship between Christians and Jews, each community is identified by the same biblical narrative. In addition, common geography and communal interaction make the institutions and values of each inexplicable without reference to the other. Especially from the Christian viewpoint, Judaism and Christianity are in chronological continuity. Not so with Islam.

Islam claims to be anterior to the Peoples of the Book. It is claimed that, through the Koran, the Prophet restored the divine revelation that his Hebrew and Christian predecessors had falsified. The dispute with Christians and Jews is not over the interpretation of a common text; their text is rejected by Islam. Moreover, Islam's origins in the customs and values of the Arab Bedouins and of nomadic tribes have left it with the jihad as the only way of relating to the non-Islamic world. The spiritual, moral, and sociological commonalities among the three religions should not be underestimated. At the same time, I believe Bat Ye'or and others are right to caution us against delusions; for instance, the delusion that a Muslim-Christian dialogue can be constructed on a basis more or less equivalent to the Jewish-Christian dialogue of recent decades.

Of the two assertive and culture-forming religions in the contemporary world, Christianity has enormous advantages over Islam, quite apart from the question of theological truth. There are approximately twice as many Christians as Muslims (two billion and one billion, respectively). Christianity is growing at least as fast as Islam and has greater evangelizing prospects, notably in Asia, especially if China really opens up. Moreover, today's world is not hospitable to jihad in the form of conquest, but is increasingly susceptible to the communications technology mastered by the Christian West. Moreover, the Christian movement is on the far side of modernity, having gone through and survived, not without severe damage, its secularizing and explicitly antireligious impulses.

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Islam, by contrast, has for three centuries been largely left out; it has been the object rather than the subject of world-historical change. As that intrepid scholar Bernard Lewis reminds us, Islam views the *dar al-harb* of Christendom as the Great Satan, meaning the Great Tempter. Militant Islamism is driven by suspicion and *ressentiment*. Which can make the world a very dangerous place, as it is already a very dangerous in, for instance, the Middle East.

A great question facing Islam—and for us as we face Islam—is whether there are authentically Islamic sources that can religiously legitimate democracy and religious pluralism. From the beginning, Christianity has had the great asset of what some derisively call its "dualism"—the conceptual resource for distinguishing between spiritual and temporal authority, which has given it enormous flexibility in relating to different political and cultural circumstances from Theodosius to Hildebrand to the religion clause of the U.S. Constitution. Islam is emphatically monistic. That is a great asset when joined to military and political power in the course of conquest, but a disabling weakness under the conditions of postmodernity.

This truth impressed me at a recent conference sponsored by the Council on Foreign Relations in which we were examining Islam and the democratic prospect in various parts of the world. As I write, the secular Kemalists (after Kemal Ataturk, who established the republic in 1923) have replaced an Islam-friendly government, and have done so in the name of democracy. The Kemalists control the army, and one Turkish participant at the conference observed with a straight face, "Turkey is in the peculiar circumstance that we may need a military dictatorship in order to preserve democracy." The assumption is that Islam and democracy are incompatible. It is an assumption that is given additional credibility by the Islamist insurgency in many Muslim countries. Of course there are other and very large parts of the Islamic world, such as Indonesia. I expect Bernard Lewis is right, however, in saying that any substantive change in Islamic doctrine must come from the Middle East, the world surrounding Mecca and Islam's constituting sacred story, a world still steeped in the Arab and Bedouin mindset of the Prophet.

There is yet another important dimension. A while back we held a meeting to discuss Samuel Huntington's seminal *The Clash of Civilizations and the Remarking of World Order*. There Wolfhart Pannenberg, the noted German theologian, made a strong argument, contra Huntington, that the Christian West and Christian East should be viewed as one civilization. That they are today viewed as two is largely the fault of European powers, especially Britain, that in the nineteenth century sided with the Ottoman Empire in order to contain Russia. I am impressed by the number of thinkers who, like Pannenberg, hold "perfidious Albion" largely responsible for the dominance of Islamophile and "Arabist" attitudes among foreign policy experts, not least in the U.S. Department of State.

Heightened Christian Consciousness

So we come back to Malraux's prophecy about the twenty-first century. That it will be religious is not necessarily good news. Religion is as riddled with the possibilities of mischief as any other dimension of the human condition. The biggest problem in sight is Islam. People like Ellul and Bat Ye'or worry about the low-level jihad of Islamic immigration in Europe, which now includes millions of Muslims, and about the establishment of Islam in Bosnia. Unless one dismisses entirely the importance of civilizational clashes, that is something at least worth thinking about very carefully. The situation in the U.S. is very different. There are probably no more than two million Muslims in this country, and half of them are native-born blacks. That could change through massive immigration in the years ahead, but at present Muslims here pose no threat to the Judeo-Christian identity of the culture, or what is left of it.

In the several discussions I have touched on here, one notices a heightening of Christian self-consciousness as we approach the Third Millennium. This is evident in the witness of John Paul II, who carefully cultivates Muslim connections while at the same time repeatedly urging, "Open the door to Christ!" It is evident also in the new stirrings among Christians here in protesting the persecution of Christians elsewhere. Not incidentally, some of the most severe persecution and oppression of Christians is in "elsewheres" dominated by Islam—Sudan, Egypt, Saudi Arabia, and Pakistan being prime examples. In all these churnings of religion, culture, and politics, there is also a notable coming together of Christians and Jews. In the forefront of the movement against the persecution of Christians are Jews such as Michael Horowitz and *New York Times* columnist A. M. Rosenthal. Nobody denies—and some, such as Bat Ye'or make it quite explicit—that a strengthened sense of Judeo-Christian unity in the face of Islam also has obvious implications for our attitude toward the State of Israel. That consideration is not front stage center, but it is there.

I am convinced we must do everything we can to nurture constructive relations with Islam. As an institute and a journal, we have over the years tried to engage Muslims in the conversations of which we are part. It is an embarrassment that in a journal dealing with religion and public life, with a readership far larger than any comparable publication, the Muslim participation is almost nonexistent. I don't know what to do about it, except to keep trying. We consider articles by Muslim

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authors, but they are typically so defensive, or so belligerent, or so self-serving—or all three at once—that they would only compound misunderstandings.

As for conferences, it is not hard to get "Muslim spokepersons." There are teams of them flitting from conference to conference all over the world. They are part of the "Davos people" so brilliantly described by Huntington in his book. I have met them in Davos, Switzerland, where top CEOs and heads of state annually gather with select intellectuals to chatter about the state of the world in the esperanto of an internationalese that is not spoken by real people anywhere. The Muslims in such settings are for the most part westernized, secularized, academic intellectuals who are there to "represent the Muslim viewpoint" but have little more connection with living Islam than many Christians and Jews. The unhappy fact is that Muslim thinkers who can speak out of the heart of authentic Islam, and especially of resurgent Islamism, either do not want to talk with us or are prevented from doing so under the threat of very real injury to themselves or their families.

Meanwhile, the Islamic world stews in its resentments and suspicions, alternating with low-grade jihad in the form of the persecution of Christians, international terrorism, and dreams of driving Israel into the sea. This turbulent stand-off, beginning with the repulsion from Vienna in 1683 and embittered by centuries of Western imperialism, cannot last forever. It seems likely that in the new century of clashing civilizations there will be either heightened conflict or a breakthrough to something like the beginnings of a dialogue. Maybe the second can prevent the first. Or maybe the first will be required to precipitate the second. In any event, we in the Judeo-Christian West should be prepared. A good place to start is to understand the history that has brought us to where we are, and to that end I warmly recommend a careful and critical reading of Bat Ye'or's *The Decline of Eastern Christianity Under Islam: From Jihad to Dhimmitude.*

FT

The Best and the Brightest

Long before the Second Vatican Council, there was a liturgical renewal among Catholics. It was very different from what is called liturgical reform today. In the 1950s, I was attracted to the movement under the auspices of the sainted Monsignor Martin Hellriegel of Holy Cross Church in St. Louis. Father Michael Mathis was another early pioneer, and the Center for Pastoral Liturgy at the University of Notre Dame gives out a Michael Mathis Award, which this year went to Bishop Donald Trautman of Erie, Pennsylvania, the recently retired chairman of the national bishops conference committee for liturgy.

Receiving the award, Bishop Trautman launched a strident attack on critics of the current direction of liturgical reform, such as Joseph Cardinal Ratzinger, Msgr. Klaus Gamber, Fr. Joseph Fessio, and groups called Adoremus and CREDO. The tide is turning, Trautman declares, raising the question, "Is liturgical renewal becoming a dinosaur?" The critics say they want to "reform the reform," but Trautman does not credit their intentions for a moment. The proposals of the critics are "alarming." "They are indicative that the liturgical advances of Vatican II are in trouble—advances which the vast majority of Catholics have received positively." While asserting that the people like the changes, he criticizes liturgists for failing to enlist the support of the people. "We have missed golden opportunities to reach the people in the pews," says the bishop.

On a college campus he recently saw a tee shirt with the message, "Join the resistance—support Vatican II." I have seen the same tee shirt. The bishop took it as a message of support for the changes since Vatican II. The young woman wearing the tee shirt I saw explained that she supports the understanding of Vatican II advanced by John Paul II and Cardinal Ratzinger, and urges resistance against those who have wreaked change and confusion in the name of "the spirit of the Council." Obviously, there are major disagreements about the meaning of Vatican II. But it obviously is not obvious to Bishop Trautman, for whom any criticism of his version of the reform is an attack on the Council.

In his speech, Trautman repeatedly calls for "full, conscious, and active participation" in the liturgy. A bishop of like mind announced a while back that, using a stop watch, he calculated that for fifty-two minutes of a Mass the people were not doing anything. Maybe they were praying or reflecting on the Word of God, which he clearly was not. But Bishop Trautman's particular passion is for "horizontal inclusive language" in Scripture readings and liturgy. Some readers may not be familiar with the terminology. As best I understand it, vertical language goes up and down, and horizontal language goes sideways. The bishops are now adopting "moderate horizontal inclusive language," which sounds like a diagonal compromise.

"I say to you," Trautman said at Notre Dame, "addressing women using male language denies women their own identity." No doubt some women have told him that, although a recent national survey, reinforced by pastoral experience, suggests

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that there is little popular support for, and considerable opposition to, what is called "inclusive" language. Here, too, it seems that those who presume to speak for "the people in the pews" have not effectively reached them. The bishop has a point with the *Catechism of the Catholic Church*, which in its excessively literal translation ends up with an overuse of "man" and "men" that is simply bad English. He cites a *Catechism* passage that says priests should "give themselves entirely to God and to men." He comments, "Given homosexual behavior in our society, this is not the appropriate language to promote celibacy." A really keen sensitivity to sexual innuendo, however, might give the bishop pause about his enthusiasm for "horizontal" language regardless of gender.

Inclusive Fundamentalists

Panicked at the prospect of his cause becoming a "dinosaur," the bishop seizes upon any argument at hand. The possibility that people may think the *Catechism* is promoting homosexuality "is an example of why exclusive language is unacceptable." He also makes much of the fact that Tyndale publishers recently put out an inclusive translation of the Bible. "If Bible scholars from the fundamentalist tradition . . . employ gender-inclusive language and our revised edition of the lectionary offers only a tokenism, there is a serious loss to God's people," says Bishop Trautman. "It is no secret that many Roman Catholics are entering fundamentalist churches today. How can the Roman Catholic tradition fail to keep pace even with the evangelical tradition in offering inclusive language?"

Even with those fundamentalists and evangelicals. How backward can we Catholics be? In his grasping for an argument, however, the bishop gets quite muddled. I do not want to believe for a minute that he believes that Catholics are becoming fundamentalists because they want gender-inclusive language. Fundamentalists are as enthusiastic about gender-inclusive language as Bishop Trautman is about the Tridentine Mass. The Tyndale experiment is a nonevent. The big development on the Bible translation front is that the publishers of the New International Version (NIV)—which is by far the most widely used translation among Protestants—recently announced that they are definitively shelving any plans to dabble, even ever so cautiously, with inclusive language. The earlier suggestion that they might do so met with massive protests. If Catholics are becoming fundamentalists, it is more likely in order to escape the "reforms" promoted by Trautman & Co.

He laments that the "reformers of the reform" now have the upper hand in the Church. "There is a dismantling of the renewal taking place before our very eyes," he declares. But then he offers the consolation that the reformers of an earlier day were also given a hard time, only to be vindicated later. "Why do we hurt our best and brightest?" he plaintively asks. Speaking of the best and brightest, he immediately adds, "By God's providence there are similarities between Father Mathis and myself." Ah, the lot of the unappreciated. A prophet is not without honor . . .

In fact, there is much to approve in changes made since the Council. Although there are no doubt some who would like to, Catholics cannot and should not simply go back to the way things were. In his undiscriminating defense of the liturgical establishment, however, Bishop Trautman dismisses critics as reactionaries. There is a big difference, however, between antiquarianism and respect for tradition, continuity, and patterns of popular devotion. That earlier liturgical renewal was one of *ressourcement*, of reappropriating the fullness of the tradition in order to complement and, where necessary, to correct liturgical practice ossified by mistaking mystification for mystery. That was the renewal embraced by Vatican II. Then came the agitations of those who mistook reform for perpetual innovation.

In the 1960s, I was the token Protestant on the board of the National Liturgical Conference. It used to attract ten thousand or more participants to its annual liturgical weeks. By the end of the sixties, the liturgical week (it may have been the last one) attracted a ragtag crowd of hippies manqué under the slogan of e. e. cummings' "damn everything but the circus." What passed for the avant garde of liturgical reform had in fact become a disheveled and depressing circus of preening self-indulgence and uncritical celebration of everything in the cultural marketplace that presented itself as liberation from putatively stifling tradition.

Bishop Trautman cites the great liturgical scholar Josef Jungman in his support, but there is a great disjunction between Jungman's work and the liturgical establishment of today. Many of the pioneers, such as Martin Hellriegel, became vocal critics of the liturgical revolution, and for their troubles were derisively dismissed as old-timers who had lost touch with "the spirit of the Council." In fact, and although they did not use the phrase, they were the first advocates of the "reform of the reform." After thirty years of changes big and small, why are some so panicked by the suggestion that it is time to reevaluate what has happened and where we ought to go from here? Of course there are on the margins a few people who think Vatican II was a mistake and would repeal everything, both legitimate and illegitimate, done in its name. But they are just that, on the margins and certain to stay there. They in no way represent what is meant by a reform of the reform.

So many good things have been done since the Council, and so much that is doubtful or

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wrongheaded. The reform of the reform is nothing more than a proposal that we try to sort them out. Bishop Trautman is right in sensing a widespread and growing uneasiness with the direction of liturgical change. But his strident depiction of those who disagree as enemies of the Council and persecutors of the "best and brightest" can lead only to sterile polarization, and a deepening of the suspicion that the liturgical establishment holds in contempt both the tradition of the Church and the sensibilities of the faithful who, despite all, persist in their faithfulness.

FT

Witch Hunt

Here's one dictionary definition of "witch-hunt": "the searching out and deliberate harassment of those (as political opponents) with unpopular views." The charge of witch-hunting is often overused, but from time to time one comes across a textbook case. For instance, the Upstate New York Coalition for Democracy. The members of the coalition include the Religious Coalition for Reproductive Choice, American Association of University Women, Anti-Defamation League, Humanist Society, National Education Association, People for the American Way, and Planned Parenthood.

An April 14, 1997 letter accompanies a questionnaire sent to public school administrators and teachers expressing "our concern over the growth of the Radical Right in upstate New York." The letter means by the Radical Right "activity intended to break down the constitutional separation between church and state." Then this: "Please be aware that we have no interest in characterizing or labeling groups or individuals." Of course not. There is no "characterizing or labeling" implicit in the list provided of thirty-four organizations of the Radical Right. The list bundles together, inter alia, American Center for Law and Justice, Aryan Nation, Becket Fund, Christian Coalition, Coalition for Educational Choice, Feminists for Life, Focus on the Family, John Birch Society, Ku Klux Klan, Militia groups, National Rifle Association, Neo-Nazis, and Promise Keepers.

Respondents are asked whether they have come across code words that indicate the infiltration of the Radical Right such as "dumbing down of our schools," "the moral decline of America," and "the need to return to family values." They are also asked about "any attempts to reduce or curtail public funding of the arts," and about anyone who has opposed school budgets in recent elections. There are other sure evidences of the influence of the antidemocratic Radical Right, such as challenges to "multicultural programs, self-esteem programs, drug awareness education, AIDS curriculum, sex education." And you know the Radical Right is on your school board if there are members who espouse "back to basics," "'abstinence-only' sex education," "private school vouchers," "injecting the 'free market' into the school," or "parental rights." When there are subversives advocating parental rights, you know it is time to take alarm. The price of the government school monopoly is eternal vigilance.

The questionnaire wants to know if any teachers or administrators have received communications from such radical organizations as the Rutherford Institute, American Catholic Lawyers Association, or Heritage Foundation threatening action "because the religious freedom of a student has been violated." The defense of religious freedom, we are given to understand, is a hallmark of the Radical Right. Respondents are asked not only about their own experience but also to inquire about the views, letters, and experiences of their colleagues. "The searching out and deliberate harassment of those (as political opponents) with unpopular views." That pretty well sums up the very illiberal activities of this very impressive coalition of what today passes for liberalism.

FT

Love, No Matter What

It was altogether a remarkable three-day conference, "Homosexuality and American Public Life," held at Georgetown University this summer and sponsored by the American Public Philosophy Institute, a splendid organization with a particular interest in public life and natural law. Among the thirty-four speakers were Michael Medved, Jeffrey Satinover, Maggie Gallagher, Robert George, and Hadley Arkes. The usual suspects, you might think, and you wouldn't be far off, but hardly a usual meeting. More than 350 people gathered from all over the country to break the silence on what for many has become a taboo subject, and they did so in an admirably calm and reasonable manner. To their credit, a number of homosexual advocates stayed for the whole conference, including Andrew Sullivan, former editor of *The New Republic*. To be sure, there were also about fifty demonstrators outside decrying the conference's promotion of "homophobia," but Robert George remarked that the demonstration was so unimpressive that he suspected it was organized

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by the Republican Party.

I was asked to address the closing session on "Where Do We Go From Here?" Herewith, for your possible interest, what I had to say.

The question "Where do we go from here?" should not be taken to imply that there is a clear path, or even an unclear path, toward a "solution" of the problems addressed by this conference. The unruly passions of sexuality are a permanent feature of the human condition. Individually and in our several communities, we can try to cope with them better than we have in the past. Toward that end we should leave this meeting with prayer for an increased measure of all four cardinal virtues: prudence, temperance, fortitude, and justice. These must inform where we go from here.

Prudence is the wisdom to understand the nature of the homosexual impulse and its organized insurgency in our public life. Temperance is the refusal to panic, and the tempering of any illusion that either the impulse or the insurgency will disappear. Fortitude—also known by the name of that fine organization, Courage—means we decline to be intimidated by opponents and brace ourselves for the duration, which will likely be a very long time.

Then there is justice. It must be unmistakably clear that ours is a concern for justice. Justice for people, especially young people, caught in sexual perplexity and assailed from within and without by pressures to consign themselves to a way of life that is marked by compulsion, loneliness, depression, and disease. Justice also for the integrity of our public life, which requires that truth be spoken with candor and disagreements be engaged with civility. Justice, finally, for millions of Americans—mothers, fathers, and children—who need all the support they can get to sustain in the present and transmit to the future the "little platoon" of love and fidelity that the family is meant to be.

Prudence, temperance, fortitude, and justice. The subject of "Homosexuality and American Public Life" has many dimensions—dimensions of politics, public policy, medicine, and education. But without these virtues all our efforts will end up in frustration, despair, or never-ending polemics. In that event, it is not so important that we would lose. The real losers would be the sexually perplexed whom we would help, the democracy that we cherish, and the families that claim our support.

In preparing for today, I looked again at the statement of the Ramsey Colloquium, "The Homosexual Movement," published in the March 1994 issue of FIRST THINGS. It still strikes me as a singularly coherent and persuasive account of the task ahead, and I warmly recommend it to your consideration. Make no mistake about it: the task is daunting, and we must brace ourselves for a work of many years. This long-term view may be discouraging to some. John Maynard Keynes famously said that in the long run we're all dead. Not so incidentally, he was homosexual, and the remark reflects the history-limiting horizon of a sterile worldview divorced from the promise and peril of successor generations.

It is said that we who challenge the homosexual insurgency are traditionalists clinging to the past. And it is true that we would respect those who came before us, as we hope to be respected by those who come after us. But our cause is for the future; the future of our children and children's children, and the future of the human project itself. Next only to religious communities of ultimate promise, the ever-fragile community that we call family is the primary bearer of hope for the future.

It is in families that ordinary people participate as procreators in the continuing creation of life. It is in families that ordinary people make history, and do so much more palpably and believably than do the movers and shakers who presumably make the history of this or any other time. Family is a synonym for history, of continuity through time, and for most people family is their most audacious and sacrificial commitment to the communal hope that in the long run we will not all be dead. The history-limiting horizon of a sexual revolution that is captive to the immediacies of desire is in the service of what Pope John Paul II has aptly called "the culture of death." In the great contest that has now been joined, ours is the party of "the culture of life."

In reading again the statement "The Homosexual Movement," I wondered about the course of the contest over these last several years. This meeting testifies to the failure of the homosexual insurgency to silence its critics. Thoughtful people with a moderately healthy backbone are no longer intimidated by the charge of "homophobia." Along with the epithets of "racism" and "sexism," the charge has lost its force by promiscuous overuse. Not everywhere, to be sure. In most colleges and universities thirty years ago, a faculty member who publicly announced that he thought homosexuality a good thing would have invited suspicion and censure. In the same schools today, he is likely in deep trouble if he offers less than unqualified approval of the homosexual movement. So there is no doubt that the insurgency has made advances. But we would be making a very big mistake if we measured cultural change by fashions in the academy. The academy today is in large part a reservation for the lost tribes of radicalisms past.

The homosexual movement is usually dated from the "Stonewall Riot" of 1969. That is almost thirty years ago. As with the racialism of an ossified civil rights establishment, and with the splintered leaderships of the several feminisms, the direction of

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the homosexual movement has become uncertain. The advantage of novelty is wearing thin. In the entertainment politics of contemporary America, thirty years is a long time to play the role of the avant garde. After a while, people come to recognize that everything changes except the avant garde.

I am inclined to the view that 1993, proclaimed as the Year of the Gays, was the high point of the effort to persuade the American people that homosexuality is, all in all, a good thing. President Clinton called for gays in the military. A huge gay pride march on Washington declared definitive cultural victory. In movies, theater, and television, on the cover of almost every popular magazine, the homosexual insurgency was exultantly championed that year. One may wonder whether it made much difference where making a difference really counts, namely, whether parents are any more welcoming of the prospect that their children may be homosexual.

Between gay advocates who present the movement as one of radical cultural change and those who want to "mainstream" homosexuality into existing social patterns, there seems to be something of a stand-off. Groups such as ACT-UP are in disarray, and the Mass at St. Patrick's has not been disrupted for some time. It is true that there are still the gay pride parades here and there, but they no longer have the shock of novelty and most people, including many homosexuals, decorously avert their eyes in embarrassment for the paraders. The advocates of "mainstreaming," such as Andrew Sullivan and Bruce Bawer, sometimes seem to be doing no more than endorsing the attitude of the Victorian lady who said they can do what they want so long as they don't frighten the horses. Of course their modesty of language and demeanor is misleading, as is evident in their demand for same-sex marriage.

My point is that the homosexual movement is not the unstoppable countercultural juggernaut that its champions and many of its opponents once thought it to be. The movement has suffered severe setbacks. It is, for instance, hard to overestimate the significance of the shattering of the myth of Kinsey's 10 percent. Although those of us who live in places such as New York and Washington may find it hard to believe, we are dealing with a deviancy from the heterosexual norm that probably involves no more than 2 percent of the male population, and it seems that half of them do not want to make a public issue of it.

Consider, too, that after three decades of strenuous effort and high confidence of victory, the demand for the formal approval of homosexuality has been turned back again and again even in the liberal oldline Protestant churches. Only the small and rapidly disappearing United Church of Christ has officially approved the ordination of the homogenitally active.

Please do not misunderstand. I am not saying that the movement has been stopped. Not by a long shot. But it is not in unchallenged ascendancy, as witness the challenge of this very conference. The strategy of the movement was caught most precisely in the lines of Alexander Pope:

Vice is a monster of so frightful mien,
As to be hated needs but to be seen;
Yet seen too oft, familiar with her face,
We first endure, then pity, then embrace.

To endure, that is the goal of tolerance. To pity, that is the goal of compassion. To embrace, that is the goal of affirmation. Those are the three strategic steps. Despite the overwhelming support of what presume to be the major culture-forming institutions of our society, and most particularly the support of the media, the American people have not been induced to take the fateful step of affirming homosexuality as a good thing.

Yes, it may be objected, but what about the first step of tolerance? Well, what about it? I hope it is agreed that we neither could nor should put consenting adults in jail for homosexual acts. In addition, we do well to remember that there has always been—in major cities and in certain lines of work—a substantial homosexual subculture. Sophisticated heterosexual New Yorkers of, say, the 1920s were probably less troubled by the homosexual phenomenon than their counterparts are today. It was not then demanded that they commit themselves to homosexuality as an ideological crusade. Homosexuality was then viewed as a deviance to be socially tolerated, but not morally approved.

It was once called the love that dare not speak its name, and many have observed that it has now become the neurosis that doesn't know when to shut up. But there is more to it than that. There was and there is a gay world and a straight world, and both the terms and the borders are set mainly by the gay world. Within the subcultural world of its own making, the name of the desire was not only spoken but exuberantly celebrated. In more recent years, the borders were declared abolished, and gays, or at least some gays, set out to remake the world.

Of course, those who oppose the homosexualizing of the world—which means redefining human sexuality as the servicing of desire—will be accused of saying that people should go back into the closet. They may call that world a closet if they choose. What we are saying is that a small minority that is at odds—whether by choice or circumstance or a combination of both—with the constituting institution of society and the right ordering of human sexuality have not the right to remake the world in the image of their dissent. We are saying that, so long as this is an approximately free and democratic society, they cannot push into the closet those who would defend the world we have received and pass it on to coming generations.

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1993, I am suggesting, may have been the high point of the insurgency's effort to win, as it is said, the hearts and minds of the American people. That effort has had only modest success. It is true that there are data indicating a greater "acceptance" of homosexuals and homosexuality. Acceptance is an ambiguous term, and I am sure it applies more to homosexual persons than to homosexuality. Nor is such acceptance necessarily a bad thing. On the part of parents in particular, it is often acceptance with a broken heart—acceptance of a son or daughter with foreboding about what is in store for them, acceptance despite shattered dreams of the grandchildren that will not be. Such acceptance is not untouched by those three other virtues, commonly called the theological virtues, of faith, hope, and charity. Keeping faith with those for whom we care, despite all. Holding on to hope for change, refusing to believe that the youthful announcement of homosexual identity is the final word. And above all charity, which simply means love. Love, no matter what.

If this is what is meant by a popular increase in "acceptance," then I say we should be thankful for it. What has not happened is a broad public persuasion that homosexuality is a good or even a morally neutral thing. Many have been momentarily intimidated into not expressing their objections and misgivings, but they have not been persuaded, and I do not believe they will be persuaded. On the contrary, they were frontally assaulted by a proposition that most of them had never had occasion to think about, and didn't want to think about. They had good reason not to think about it. The philosopher Sidney Hook, late in life, asked a friend, "But what do they actually *do*?" When told, he recoiled in disbelief and declared, "But that's disgusting!"

Sidney Hook's response—reinforced by habit, moral teaching, and devotion to marriage and family—is the response of most people. It is a response that is largely intuitive and pre-articulate. People were told, and many came to believe, that they should be ashamed of themselves for their irrational prejudice. Many intellectuals—those who belong to what has aptly been described as the herd of independent minds—readily believed it and eagerly performed the appropriate rituals of self-denigration to expiate their sin of homophobia. But for others, what was intuitive and pre-articulate is increasingly being thought through and articulated. They will no longer be silenced, as witness this conference.

"Can't we talk about it?" That seemingly innocent question is a mantra of the homosexual movement. The assumption is that, the more people talk and think about it, the more affirmative they will be. The leaders of the movement may come to rue the day that they invited the American people to think long hard thoughts about homosexuality. Examining the way of life that is captive to the immediacies of homoerotic desire—a way of dissolution, deception, despair, and early death—more and more people will find the reasons and the words for a response that was at first intuitive and pre-articulate.

To be sure, the advocates of the movement say that the pathologies of the gay subculture—which at least some readily acknowledge—would be remedied by the general acceptance of homosexuality. The opponents say that such acceptance would only guarantee the spread of the pathologies. I do not think the American people are prepared to gamble on who is right. Certainly there is nothing in historical experience or common sense to suggest that pathologies are remedied by integrating them into society, while there is abundant reason to believe that such pathologies will further debase a society that has lost its capacity to censure. Already in our society it is too often the case that moral judgment is the duty that dare not speak its name.

Having failed in the arena of politics where we democratically deliberate how we ought to order our life together, the homosexual movement has no choice but to vest its hopes in courts, government regulations, professional organizations, and the bureaucracies of the public school system. In these arenas their victories have been substantial, and they aspire to much more. In all these arenas, the movement must be challenged at every step—fearlessly, calmly, reasonably, relentlessly. The good of innumerable individuals, and the common good, depend on it. The outcome of that challenge is uncertain. We cannot know what the future holds. We must do what we can. Eliot said it in "East Coker": "For us there is only the trying; the rest is not our business."

Finally, we will not understand what is happening or be able to do much about it unless we recognize the cultural erosion of what can only be called a spiritual sensibility—a sensibility that we are all flawed creatures living in a fragile world that cannot survive without forbearance and forgiveness. A young man to whom I was explaining the Church's teaching about disordered sexual desire responded with the plaintive cry, "But the Church is still saying there is something wrong with me!" Well, yes—and with me, and with all of us. But we must never define ourselves—not entirely, not most importantly—by what is wrong with us. Who we are, our identity, is more than that, much more than that. We are defined not by the disorder of our desires but by the right ordering of our loves and loyalties, and at the end of the day we must all ask forgiveness for loves and loyalties betrayed. Without forbearance and forgiveness, we are all hopelessly lost.

Perhaps you saw it too, the story about this new organization of physically disabled people who criticize the movie actor Christopher Reeves because

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he wants to be cured. The group wants to promote what it calls disability pride. "I can't walk and I'm glad I can't walk," declared one young woman. "I don't want to walk. Disability is good!" We must hope that she does not really believe that. While being sensitive to the poignancy of her defiance, we must refuse her demand that we believe that. Her disability is not good, it is very sad; but she is more than her disability. We support her in her struggle, and help her not at all by pretending that it is not a struggle. Of that truth we must also persuade our homosexual brothers and sisters. We must do so in a way that carefully distinguishes between affirmation of the homosexual person and opposition to the homosexual movement. We must do so humbly, in painful awareness of our different but often more severe disabilities. But we must also do so firmly, knowing that homosexuals are not helped and many lives are ruined by their effort to impose upon others their defiant denial of the troubling truth.

"Can't we talk about it?" they ask. Well, yes, we are talking about it, and we will continue to talk about it. Although some seem determined to view us as their enemies, we will refuse to view them as our enemies. We will talk about it with them, and with whoever else is willing to talk. We will talk about it, God willing, in a manner that is informed by the classical virtues of prudence, temperance, courage, and justice. And we will talk about it in a manner that is graced by the virtues of faith, hope, and love. Love above all. Love, no matter what.

FT

While We're At It

■ Excuse me for the interruption, but have you thought that others might enjoy reading this stuff as much as you do? If you send us a list of family members, friends, and associates who should be reading FT, we'll send them a sample issue in your name. The only risk is that they may resent your having kept the secret from them until now. Live dangerously. Do it today.

■ That famed British understatement is so often imitated in a manner that ends up seeming much affected, but every once in a while it is done just right. For instance, this by J. Leslie Houlden in the *Times Literary Supplement*: "From the viewpoint of historical inquiry, it is in the highest degree inconvenient that Jesus of Nazareth left no writings behind. However faithful the record of his words in the Gospels, they have gone through the contextualizing and interpreting minds and pens of others, and so has, in part, the character of responses or reactions to Jesus. From the viewpoint of Christian faith, that same fact points to a divine recklessness and indifference to certain kinds of finity that is breathtaking and often scarcely tolerable." Houlden, theologian emeritus at King's College, London, is reviewing three new books on St. Paul: *Paul Between Damascus and Antioch* by Martin Hengel and Anna Maria Schwemer, *Paul: The Mind of the Apostle* by A. N. Wilson, and *What Paul Really Said* by Tom Wright. Houlden agrees with almost everyone that Hengel and Schwemer are masterful, and A. N. Wilson is a sometimes interesting amateur eccentric. He rather likes Wright, who is writing in direct response to Wilson's "revolutionary" theories, but thinks he fails to translate successfully Paul's worldview in a way that is accessible to moderns. On the more general question of who "founded" Christianity, Houden has this to say: "Does it then make sense to see Paul as the real founder of Christianity? The question is in part semantic. If by Christianity you mean what was potentially a world religion, nonethnic in membership, centered on Jesus, then it was Paul's single-minded and determined vision that got it going on that basis. If you mean a faith that is so centered on Jesus that it sees virtually everything in terms of his spiritual sovereignty, consigning all else to the margins, then Paul has a better claim than anyone else to have established this faith. If you mean a church system based on congregations with leaders, rites, and common life, then again Paul has the best claim to have established it, at least in lands beyond Palestine and Syria, and in certain respects to have done so in ways that turned out to be, in essence, permanent. It was Paul too who bequeathed certain thought-patterns, words, and images that have proved determinative in Christianity (though with endless developments in their sense)."

As for Wilson's contention that Paul was a radical innovator who incorporated large elements of pagan mystery religions, Houlden is not impressed. "However innovative Paul may have been, and however influential he proved to be, he himself was conscious of his being in line with his Christian predecessors, with the single exception of the terms for the admission of Gentiles to the Church. As far as belief was concerned, he saw himself as the inheritor not the inventor of faith (1 Corinthians 15:3). With regard to Jesus' 'lordship' too, Paul is no originator: he quotes the Aramaic prayer that is framed in those terms (1 Corinthians 16:22)."

Houlden's conclusion is worthy of John Henry Newman: "There is something of the delighted naivete of Monsieur Jourdain in those who scandalously claim that Paul 'invented' Christianity. Perhaps an enterprising publisher could make a coup with a series on 'the founders of Christianity,' including all the significant figures in the long story.

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The claim would be as true—and as misleading—about them all. But at least this debate makes us attend to the pervasiveness of movement in the development of Christianity that so many find it their duty to play down or even deny."

■ The same issue of *TLS* treats another biography of St. Paul by Roman Catholic scholar Jerome Murphy-O'Connor, OP. The book is *Paul: A Critical Life* (Oxford University Press), and the author says he is aiming for "vividness and concreteness." The reviewer, Michael Goulder, thinks he has achieved that, but at the price of sober judgment. After listing a number of instances in which Murphy-O'Connor flies in the face of accepted scholarship, he writes: "This is an example of the author's desire for 'vividness and concreteness,' which many will think has triumphed over sober judgment. Another instance is his claim that Paul was married. There is no suggestion at all in any of Paul's letters that he had had a wife; and since he does speak of his own personal situation in the passages on marriage in 1 Corinthians 7, we might expect him to have done so. But Murphy-O'Connor argues that marriage was virtually universal; Jewish boys were married off by their parents at between the ages of eighteen and twenty; Paul's wife and children had probably died in an accident or an epidemic. This might then explain his zeal to persecute the Church, arising from his suppressed anger. This certainly makes for vividness, but it is not biography." Goulder concludes: "I list this selection of options which he has taken, not because they are obviously wrong—he would have some scholarly support for most of them; Murphy-O'Connor is learned, and there is no conclusion for which he does not put a reasoned argument—but because the frequency of colorful and surprising conclusions saps the reader's confidence. Can he really believe that services at Corinth were presided over by homosexuals? Or that the main part of the Epistle to the Romans was written without any reference to the situation in Rome, because Paul happened to be interested in the question of Law and faith at the time? This *Paul* may have its use for scholars to explore possible byways; but for the general reader in search of the Steps of St. Paul, less vivid but more dependable Lives are available."

■ A screed in the format of a news story in the *Charleston Gazette* is titled "Anti-Choice Zealots May Stop at Nothing." The object of author Stephanie Salter's wrath is Operation Rescue, whose leaders "never own up to the deceptive manipulation of their propaganda." For instance: "A reproduced photo of a rare, late-term abortion (or what O.R. says is an aborted fetus) represents all abortion. That most abortions are performed when the 'baby' can be seen only beneath a microscope is a fact O.R. refuses to acknowledge." I imagine they readily acknowledge the fact, but it's not easy to produce a poster of a baby that can't be seen. I am always bemused by people who say that a fetus at, say, two weeks "doesn't look like a baby." It's exactly what a two-week-old baby looks like. It's what I looked like and you looked like when we were two weeks old.

■ Just today there were two more, one from a Methodist and another from a member of the Orthodox Church in America. Letters full of praise for the journal but plaintively asking why we don't have more Methodist and Orthodox (others say Presbyterian, Baptist, Pentecostal, etc.) writers. How to respond? We take very seriously our being an ecumenical and interreligious publication, but we have no quota system. We can consider for publication only what is submitted for consideration. Most of our articles are not commissioned but, as it is said, come in over the transom, and they come by the hundreds. All are given attention. The steady fact is that a disproportionate number of publishable manuscripts—measured by subject matter and style—come from Roman Catholics and Jews, with Lutherans in third place (although I haven't done an actual count). The moral: We cannot consider "more Methodist" (or Orthodox, or whatever) articles in the abstract; we can only consider articles written by Methodists (or Orthodox, or whatever).

■ Passion Plays produced around the world have for a long time been a particular, and understandable, concern of the Jewish community. Here is an invitation from the American Jewish Committee to attend a one-day conference on the subject. The letter says, "The issue of Passion Plays is especially critical because of the religious nature of many of the productions." All of them, I should hope.

■ Mr. Dooley opined that the Supreme Court follows the election returns, an opinion which devotees of our robed masters issuing oracles from the high temple in Washington deem disrespectful, if not blasphemous. In fact, the Court does much more than follow the election returns; it is a thoroughly political institution. And that is exactly what advocates of a "living constitution" to replace the Constitution say that the Court should be, and they do not hesitate to condemn as recklessly radical those who would return the Court (and the courts) to the very limited business of interpreting law. Readers keep sending in snippets that demonstrate the historical ironies in the long-running debate over the role of the judiciary. Today this concern is thought to be conservative, but it was not always so. Sixty years ago, for instance, FDR promoted his "court-packing scheme," as it is commonly called, and is commonly condemned in textbooks as an act of irreverence against the sanctity of the judiciary.

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Although Roosevelt's proposal failed, it had the desired political effect on the judicial politicians of the time. His description of the problem in a radio address of March 9, 1937 quite perfectly addresses our circumstance in 1997: "The Court, in addition to the proper use of its judicial functions, has improperly set itself up as a third house of Congress —a super legislature, as one of the Justices has called it—reading into the Constitution words and implications which are not there, and which were never intended to be there. We have, therefore, reached the point as a nation where we must take action, to save the Constitution from the Court, and the Court from itself. We must find a way to take an appeal from the Supreme Court to the Constitution itself. We want a Supreme Court which will do justice under the Constitution—not over it. In our courts, we want a government of law—not men."

■ The media are often, and in this case rightly, pointing out that Catholic Charities gets millions of dollars in government grants, and spends a good deal of that in lobbying for government grants to organizations such as Catholic Charities. The misimpression, however, is that Catholic Charities is a single national organization based in Washington and with branches throughout the country. The fact is that every diocese and archdiocese has its own program of assistance to the needy, usually called Catholic Charities or something similar, such as Catholic Social Ministries. These independent programs are loosely associated with a dues-collecting organization called Catholic Charities USA (formerly, National Conference of Catholic Charities). Regrettably, Catholic Charities USA does fund-raising throughout the country, leaving many people with the impression that they are contributing to Catholic Charities in their diocese. Some diocesan Catholic Charities make a point of distinguishing themselves from Catholic Charities USA and also refuse any government funds at all, thus giving their people a greater participation in the local church's works of mercy. The media impression that there is one big nationwide organization called Catholic Charities is not entirely the fault of the media. It would seem to work to the advantage of Catholic Charities USA, which has a big bureaucracy that mainly replicates the United States Catholic Conference in advocating expanded government welfare programs. The present structure may be viewed as a good deal for Catholic Charities USA, but it can undermine the good work of diocesan programs, and does little to instill popular confidence in the Church's works of corporal mercy.

■ At the "American Treasures" exhibit marking the 100th anniversary of the Library of Congress' Thomas Jefferson Building, W. Jefferson, the President, praised the library for putting texts such as the Declaration of Independence on the Internet, and Chief Justice Rehnquist elevated the proceedings by reading from a 1940 speech by then-Attorney General Robert Jackson at an occasion marking the 150th anniversary of the first session of the Supreme Court. Said Jackson: "This court is more than an arbiter of cases and controversies. It is the custodian of a culture, and is the protector of a philosophy of equal rights, of civil liberty, of tolerance, and of trusteeship of political and economic power." Since he chose to read it, and did so without demurrer, one may wonder whether that is Mr. Rehnquist's view of the Court. Nine unelected and, for the most part, undistinguished lawyers are *the* custodians of a culture? One stands, or perhaps one should genuflect, in awe before the robed oracles seated in the sacred chamber of the temple on First Street. Theirs is a heavy burden, and great is the debt of the citizenry for their bearing it on our behalf. As the late Alexander Bickel of Yale wrote in *The Least Dangerous Branch* (1962), "Whatever the Court lays down is right, even if wrong, because the Court and only the Court speaks in the name of the Constitution. Its doctrines are not to be questioned; indeed, they are hardly a fit subject for comment. The Court has spoken. The Court must be obeyed." Unlike Jackson, Bickel was writing in derision of the inflated pretensions of the Supreme Court.

■ The Endless Search for the Mainstream Department. Professor Douglas Jacobsen of Messiah College in Pennsylvania writes in the April issue of *Interpretation* that Protestantism is in need of a new center. The two-party model (liberal and evangelical) will no longer do. Jacobsen's new center, it says here, "must be based on inclusiveness rather than exclusiveness. Its net must be spread as widely as possible, to as many people as possible. It should be a meeting place of many varieties of Protestants." I don't want to be a spoilsport, but I wonder if the new centrism isn't what used to be called liberalism.

■ "What is actually happening is that the people of Britain and Ireland are paying indirectly for America's holocaust of abortion, which has now disposed of more unborn babies than there are people in Australia." How can that be? The *Spectator* of London explains that in 1992 and again in 1996 Bill Clinton used the Irish issue to appeal to Democrats who were put off by that party's support for abortion on demand. "Many of these working-class Democrats think of themselves as Irish, a very American quest for some sort of identity in a vast country where the population is in constant motion and real roots are hard to put down," says the *Spectator*. In his book, *The Greening of the White House*, Conor O'Clery, formerly Washington correspondent of the *Irish Times*, tells how in 1992 Ray Flynn, then mayor of Boston, helped Clinton with

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Catholic voters by countering the abortion question with support for the independence of Ulster from Britain. Flynn was later appointed ambassador to the Vatican. "Now it is quite likely," says the *Spectator*, "that Clinton's successors, both Democrats and Republicans, will compete for this newly awakened Irish vote for the foreseeable future, at the expense of Ireland and Britain, whose interests have never been seriously considered. One evil has begotten another."

■ Ecumenism does not always mean reciprocity, or so it seems. While Protestant seminaries have a growing number of Catholic students, they have very few faculty who got their degrees in Catholic graduate programs. According to the 1994 Directory of the Council of Societies for the Study of Religion, top-ranked divinity schools such as Chicago, Harvard, Yale, Vanderbilt, Emory, and Duke had few, if any, graduates of Catholic theological programs on their faculties. The six Catholic theological faculties studied, on the other hand, are loaded with faculty from non-Catholic programs. Notre Dame, for instance, has forty-three faculty members, twenty-five of whom are from non-Catholic programs. One suggested explanation of this pattern is anti-Catholic prejudice, especially in nondenominational and state schools. As for Catholic schools, they seem to prefer hiring graduates of prestigious nondenominational and state institutions. The study does not measure how Catholic are the Catholic graduate programs, and, given the general dominance of scholarly guild over ecclesial allegiance in academic religion, where people get their doctoral union cards may make very little difference.

■ I don't often have occasion to comment on the *Tuscaloosa News*, even though it is owned by the *New York Times*. In fact, I don't think I've ever commented on the *Tuscaloosa News*. But here's an editorial railing against that Judge Roy Moore of Etowah County, Alabama, who displays the Ten Commandments in his courtroom. The editorial deplores his "rabid supporters" and cheers fifty-two Alabama clergy who, it says here, condemn the "style of Christianity [that] weighs too heavily in favor of a single religious mindset." "Rabid" seems something less than civil, and one has to wonder about styles of Christianity that do not come down strongly on the side of Christianity. We are told that the fifty-two clergy are from "well established religious backgrounds: Baptist, Presbyterian, Episcopalian, Jewish, Hindu, and others." I confess to being curious about the "others" that come after Hindu on the list of religions well established in Alabama.

■ This from a welcome editorial in the *Christian Century*: "Imagine sitting around the editorial offices of the CBS program *48 Hours* the morning after the nation learned about the mass suicides at the Heaven's Gate community and about the group's curious belief in a spaceship supposedly traveling behind the Hale-Bopp comet. You are feeling lucky, because the program already has on hand material for a story that will make just the right tie-in with Heaven's Gate. So on Holy Thursday, March 27, you show that familiar footage of the bodies being carried from the mansion in Rancho Santa Fe, and the photo of the leader staring with his crazed look into the camera, and then you bring *48 Hours* to a rousing finish with a segment on another disturbing religious group. You are in television heaven. There is just one problem. The religious group you are profiling doesn't have the remotest connection to the suicide cult of Heaven's Gate. In the excitement of the moment, the network of Edward R. Murrow and Walter Cronkite does not stop to ask the ethical questions: Is this treatment fair to all concerned? Does each part accurately relate to the theme of the program? Is it, in short, true?" Recklessly setting aside the truth question, CBS focused on the Bruderhof, an Anabaptist group with 2,500 members in eight communities in this country, including one a little north of here. The Bruderhof was founded more than seventy years ago in Germany by Eberhard and Emmy Arnold, and after being expelled by Hitler was finally reestablished in the U.S. Devoted to nonviolence and the sharing of goods, it has earned the admiration of people beyond numbering. Dan Rather introduced the program this way: "Tonight in a special edition of *48 Hours*. Looking at cults, looking at when—if—people going their own way can sometimes go too far. . . . A little piece of heaven outside of New York City. Or is it?" The CBS indictment of the Bruderhof consisted in the evidence of a San Francisco man who divorced his wife, a member of the community, and of a young girl who ran away from the community at age fifteen because she felt stifled by parental discipline. A bitter ex and a teenager insisting on her right to sexual self-expression. Big deal. Rather ended the program with this: "We want to be absolutely clear on this point. There is no suggestion whatsoever of any link between the Bruderhof commune and what took place at the mansion in Rancho Santa Fe, California. What we are trying to do is give you a range of things to think about when you think about cults, communities, and people who remain apart." This is smarmy dishonesty of a low order. The *Century* concludes: "The *48 Hours* program was, quite simply, a distorted and shameful display of an antireligious bias for which Dan Rather, the show's producers, and CBS should apologize profusely to the Bruderhof community." And to its viewers. I'm not sure, though, that "antireligious bias" quite gets it. The key phrase in Rather's sign-off is "people who remain apart." It seems that those who stand apart from the decaying culture of the megamedia, whether for religious reasons or the impulses of

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elementary decency, offend Mr. Rather's sensibilities and are fair game for slander.

■ Before 1963, Pope Pius XII was widely viewed, by Jews as well as Christians, as heroic in his opposition to Nazism. Then came the play *The Deputy,* which purported to reveal, without any reference to historical fact, the inner mind of a coward who acquiesced in the Holocaust. That libel is ratcheted up by former priest James Carroll, who, in a vicious and rambling essay, "The Silence," in the April 7 *New Yorker,* enlists the help of dissident theologian Father Hans Küng in making the case that the Catholic Church, along with Hitler, bears "co-responsibility" for the Holocaust. The reasoning, such as it is, is tortuously confused. The argument would seem to be that Pius XII's alleged collusion with Hitler is connected with the dogma of papal infallibility. That claim aside, Carroll's essay is riddled with errors of fact. On October 16, 1943, when the Nazis appeared to be starting a roundup of Rome's eight thousand Jews, Carroll says the Pope made no protest. In fact, that very morning he had the Holy See's secretary of state deliver a strong protest to the German ambassador, and he sent two German bishops to intercede with the German generals in charge. More than a thousand Jews were caught in the first raid, but the roundup promptly came to an end and the Jews of Rome disappeared into Rome's monasteries and convents, where they were kept safe until the war was over. Despite the German occupation, 85 percent of the Jews of Italy survived. All this is documented in many studies, most recently in Margherita Marchione's *Yours Is a Precious Witness: Memoirs of Jews and Catholics in Wartime Italy* (Paulist, 1997). In a similar vein, Carroll claims that a Polish cardinal, Augustyn Hlond, delivered an "anti-Semitic diatribe" in support of a 1936 boycott of Jewish businesses. In fact, on that occasion Cardinal Hlond spoke of "the very many Jews who are believers, honest, just, kind, and philanthropic . . . who are ethically outstanding, noble, and upright." "I am against that moral stance, imported from abroad, that is basically and ruthlessly anti-Jewish," the Cardinal declared. "It is contrary to Catholic ethics. One may not hate anyone. It is forbidden to assault, beat up, maim, or slander Jews. One should honor Jews as human beings and neighbors. . . . Beware of those who are inciting anti-Jewish violence. They serve an evil cause." This is an anti-Semitic diatribe? In the commentary in which he cites Hlond's actual text, Monsignor George Higgins remarks, "I could not escape the feeling reading Carroll's essay that he was, unwittingly, using the example of the Holocaust to bolster his own theological theories about ecclesiology and infallibility." Msgr. Higgins is perhaps being too kind. In any event, the editors of the *New Yorker* and myriad others who have for more than three decades joined in the slandering of Pius XII and the Catholic Church more generally for complicity in the Holocaust do not have James Carroll's excuse, if excuse it is. One notes, incidentally, that Mr. Carroll is the author of a book-length indictment of his father, who as a senior military officer played a large role in the war in Vietnam. His father. The Holy Father. A commentator of a Freudian disposition would find it near irresistible.

■ One's bemusement about the antismoking campaign is constantly renewed. A reader in Ann Arbor, Michigan, is not sure I'm right in thinking that the campaign, however riddled by confusions, says something hopeful about the power of moral suasion even in a culture so depraved as ours. He and his wife belong to a church that meets in a public school, and he was struck by a classroom plastered with antismoking propaganda. "Smokers are dumb." "Smoking is gross." There was also a glossy poster with rows of photographs of animal posteriors and one cigarette butt. Butts, of course, are disgusting. Next to the poster was a banner, "HIV is a disease, not a moral issue." Clearly, the anti-smoking agitation was not a matter of moral suasion but of aesthetic bullying and insult. While HIV—which is arguably related to behaviors (e.g., sodomy and intravenous drug use) of questionable morality—is proclaimed to be something that just happens. So maybe I was being too hopeful about the survival of moral suasion. I am sometimes accused of that. Being too hopeful, that is. Often, in fact.

■ *Ex Corde Ecclesiae* means "from the heart of the Church" and is the title of an apostolic constitution on Catholic higher education issued by Pope John Paul II in 1990. It has been the subject of considerable controversy in this country. After prolonged negotiation between bishops and the administrators of Catholic universities and colleges (of which there are more than two hundred), there appeared in 1996 a document on the constitution's "application to the United States," which was submitted to Rome for approval. Now Cardinal Pio Laghi, Prefect of the Congregation for Catholic Education, has informed the U.S. bishops that their "application" is less than satisfactory. Many academic administrators have protested that the constitution's requirement that bishops have a definite role in determining whether an institution is in fact Catholic interferes with American understandings of academic freedom. There is a more believable reason for administrators to be nervous. For most schools there would be disastrous consequences for recruitment and alumni support were they to be decertified, so to speak, as Catholic. There is most particular resistance in some quarters to what is known as Canon 812, which reads, "It is

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necessary that those who teach theological disciplines in any institute of higher studies have a mandate from the competent ecclesiastical authority." The Church's concern, of course, is for what in other enterprises might be called truth in advertising: those who are presented as teaching Catholic theology should teach Catholic theology. To be sure, that puts it somewhat too simply. There are legitimate concerns about academic freedom, rightly understood as scholarly inquiry that presses the envelope of received formulae. *Ex Corde Ecclesiae* and other directives from the Holy See, I believe, make ample allowance for, and indeed encourage, such inquiry. The problem with many schools in the U.S., however, is that they are still following a course of independence and "secularization" that was set almost thirty years ago, and they now find themselves in the unsustainable position of wanting the benefits of calling themselves Catholic while having no real accountability to the community of faith that is the Catholic Church. The dynamics put in play by *Ex Corde Ecclesiae* seven years ago have created not a crisis but a calibrated redirection of Catholic higher education. It is possible that some schools—experts estimate as many as a third—may stop calling themselves Catholic or go out of business, or both. But many other schools are, for the first time since Vatican Council II, moving toward a clearer assertion of what is called "Catholic identity," and that is a change, or at least the beginnings of a change, that is most welcome.

■ "This money comes from outside Alabama. It's a bunch of carpet-bagging money coming into Alabama. We don't need to have Alabama made an example of some portion of the radical left that wants to mislead our state." George Wallace of thirty years ago, right? Not at all. Read "Colorado" for "Alabama" and "radical right" for "radical left," and you have Governor Roy Romer complaining about support for a referendum aimed at assuring parental rights in education. Romer's statement is favorably reported by John M. Swomley in the *Humanist*, who also has some harsh words for "the far right's international mentor, Pope John Paul II." Swomley, a retired Methodist professor of social ethics, is an old left reliable who serves on the boards of both the ACLU and the American Humanist Association. In the latter organization's magazine he writes "Watch on the Right," in which he ties together John Paul II, the CIA, the Institute on Religion and Democracy, and Promise Keepers in order to advance claims of a conspiracy so vast as to make the ghost of Joe McCarthy blush. Prof. Swomley no doubt calls it keeping the faith.

■ The American premiere of Peter Greenaway's *The Baby of Macon* was held at the American Museum of the Moving Image in Queens, New York. Mainstream reviewers have referred to it as a "snuff film," a "corrupt movie," and "one of the most gratuitously unpleasant and indefensibly nasty films in recent years." William Donohue of the Catholic League describes it this way: "The movie, set during the Renaissance in France, concerns the 'miraculous' birth of a baby boy. The child's older sister pretends that she is the virgin mother and dresses as the Virgin Mary. She attempts to seduce a bishop's son, wishing to make him Joseph to Mary and chooses a stable for her seduction; it is complete with animals and a manger. The bishop's son is graphically disemboweled after the birth of the son. The Church takes the child from the mother, holding her to be unfit to have a miracle child, and then sentences her to gang rape: in a scene that lasts for ten minutes, she is raped by 113 soldiers a total of 217 times. The child is then dismembered after his bodily fluids—spittle, urine, phlegm, and blood—are sold by the Church at an auction." The Catholic League is upset that the film's premiere is funded by federal, state, and city taxpayers. Those Christians just can't take a joke.

■ A friend whose judgment in such matters I trust —perhaps I should say trusted—told me I would be pleasantly surprised by *American Visions*, a lavishly ballyhooed and lavishly funded PBS series in which Australian expatriate and *Time* editor Robert Hughes explained the American experience through the prism of the country's art. I watched the first hour. Then I watched the second to see if it was really as bad as it seemed to be. It was. Hilton Kramer, editor of the *New Criterion*, had a similar response: "It is about the earlier history of our country . . . that *American Visions* is most unforgiving—and, alas, most unforgivable—in its relentless determination to debunk, deflate, deconstruct, and otherwise discredit virtually every claim ever made for the virtues of our democratic system. Part of Mr. Hughes' animus, in this regard, seems to derive from his profound aversion to religion—especially to the varieties of Christian faith that were so important a part of our early history. I gather from his own accounts that Mr. Hughes is himself a lapsed Catholic, and he seems to have projected upon the entire history of this country the passions of a convert to the anticlerical cause. He thus never misses an opportunity to remind us that 'These men of God were killers on a biblical scale,' and so on." The antireligious bias is bad enough, but one comes to expect that. What is really galling is the utter banality of Hughes' art commentary and the air of casual superiority with which he delivers what, in an introduction to the series, he calls a testimonial of love for the American experience. PBS stations run this little promo that asks, If PBS didn't do it, who would? In many

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instances, the answer is nobody. Which is just as well.

■ Although it occasioned an enormous upheaval in the organization, the International Bible Society (IBS) has canceled all plans for a more "inclusive" version of the New International Version (NIV). According to IBS, the NIV, first published in 1984, is the most widely distributed Bible in the English language and represents 45 percent of all the Bibles circulated in North America. "The NIV doesn't belong to IBS or our licensed publishers, it belongs to the people," said board chairman Victor Oliver. "Virtually all other contemporary Bible translations already reflect gender treatments consistent with the language of today. However, the NIV has essentially become the Bible of the evangelical church, which has come to trust and depend upon the NIV's current accuracy, clarity, and readability." The NIV is a fine translation, faithful to the text and approximating the English style of the Revised Standard Version that, regrettably, has been replaced by the gender-jiggered New Revised Standard Version. The decision of the IBS is most welcome. I would note only that it is not a question of being "consistent with the language of today." The NIV *is* the language of today. The minority that agitates for "gender-inclusive" revision aims at imposing what they prefer to believe is the language of tomorrow. As has been frequently remarked here, one of the great misfortunes of our time is the loss of a common biblical vocabulary. The stability of NIV may help remedy that. (While I'm at it, and since the question is frequently asked, the RSV is available in fine hardcover and paperback editions from Ignatius Press.)

■ Father Robert Drinan, a Jesuit and professor of law at Georgetown University, was while in Congress a firm supporter of the abortion license and provided Catholic politicians with a specious rationale for adopting the position of "personally opposed but . . ." Last year he supported President Clinton's veto of the partial-birth abortion ban and thus crossed a line that prompted church authorities to demand a retraction. On May 12 he issued the following statement: "Articles that I wrote in the *New York Times* on June 4, 1996, and in the *National Catholic Reporter* on May 31, 1996, were used in ways I did not intend. I withdraw those statements and any statement that could be understood to cast doubt on the Church's firm condemnation of abortion—a doctrine that I totally support. Moreover, new information about the true nature and widespread use of partial-birth abortion renders my statements on that issue in 1996 factually incorrect. I do not believe that every moral evil should be outlawed. I do, however, see abortion—particularly partial-birth abortion—as a grave evil and can understand why Church leaders are urging lawmakers to ban it. I do not want anything to impede that effort. On the contrary, I join in that effort and stand ready to promote laws and public policies that aim to protect vulnerable human life from conception until natural death. I support the Catholic bishops in their efforts to exercise moral leadership in the fight against abortion." One is puzzled by the reference to his statements being used in ways he did not intend, since his stated intention was to oppose the bishops and support Clinton. Nonetheless, his retraction is most welcome, as is the episcopal initiative that elicited it.

■ Feminists are divided over pornography. While such as Catharine MacKinnon and Andrea Dworkin claim it exploits women, others contend that porn is a subversive instrument undermining the oppressive conventions of the bourgeois establishment. According to an item in *Civilization*, however, the establishment is doing very nicely by pornography. "In fact, last year Americans spent more on pornography and its satellite businesses (peep shows, strippers, computer porn, etc.) than they did on Hollywood movies, and vastly more than they did on rock and country music recordings combined. Pornography is popular, and profitable, entertainment. So what is it subverting?" Then there is pornography for the toddlers in public school sex education. Writing in *lingua franca*, M. G. Lord wonders how feminists can "convince you that pornography is dangerous or subversive once it's assigned as homework?"

■ The folks up in Albany, New York, have quite a little dispute going. It started with an article in the *Evangelist*, the diocesan paper, on "Jesus' Understanding of Himself," in the course of which Scripture scholar and *Evangelist* columnist Father Roger Karban opined that in Mark's Gospel, "Jesus doesn't become God until his baptism." Now it's true that the Mark passage, along with others, was invoked to support the heresy of adoptionism, but one really must wonder what it means that one could "become" God. When it comes to God, it would seem, one either is or isn't. In response to protesting letters, the editor of the *Evangelist* issued a pronunciamento in magisterial tones, "Far from being 'false doctrine,' Father Karban's remark was a statement of fact." So that's that. Then the *Wanderer* weighed in with a letter claiming, if we understand it correctly, that the hypostatic union means that Jesus never changed and had, from the moment of conception, a perfect knowledge of all things. Press in that direction and you end up in docetism, the teaching that Jesus was not, not *really*, a human being. The reader who sent these clippings wants me to take Father Karban to task, and maybe he should be. But I confess that I am struck that those people in

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Albany are at least arguing about things that really matter.

■ The usual suspects, including the ACLU, have rallied to remove offending language from the mission statement of the Michigan State Board of Education. The language adopted in 1995 was taken almost verbatim from the preamble to the state constitution: "We, the Michigan State Board of Education, grateful to Almighty God for the blessings of freedom, do earnestly desire to secure these blessings undiminished for our children." Critics also complain about the statement's exhortation to "seek truth." The *Wall Street Journal* comments in an editorial titled "Michigan Expelling God": "It's hardly a coincidence that the decline in the quality of the public schools occurred at the same time that every vestige of religion was being eradicated from them. Our schools need all the help they can get—including God's." The editors are no doubt right about the non-coincidence, but by definition nobody can "expel" God from anything or anywhere, and God's help is hardly an add-on to other efforts, all of which are totally dependent upon God's help. Am I quibbling? Maybe, but preschool theology gives a bad name to religion in public, especially when promulgated by the friends of religion in public. While I'm on less than ultimate disputes about ultimate things, I note that the Rutherford Institute has worked out a deal between the Rev. Guy Aubrey and the Cincinnati Reds. Rev. Aubrey is the fellow who, during the 1990 World Series with Oakland, displayed a banner emblazoned with "John 3:16." The Reds said it was against the club's rules and ushered him out, but a U.S. District Court said the Reds' policy was vague and overbroad. So in 1993 the Reds said that only "baseball related" signs could be displayed, and Rev. Aubrey showed up with a sign reading "Go Reds—John 3:16," and was again thrown out. The court again said the policy didn't pass constitutional muster; the Reds responded by banning all noncommercial signs and banners, but then, under pressure from Rutherford, finally caved and now permit fan signs without discrimination. A mighty blow struck against the naked public square, I suppose.

■ Since the city of St. Paul got the cathedral, Minneapolis must do with a basilica. Started last year, the "Basilica Block Party" is a big money-raiser featuring diverse rock bands. It is advertised in the local newspaper with a large picture of the Last Supper. The legend says, "A Party of a Higher Order." Gross is one word for it. Blasphemy also comes to mind. But perhaps everyone but its sponsors can agree that it is pandering of a very low order.

■ We recently commended a book of John Paul II's encyclicals for "avoiding the sometimes misleading 'inclusive' language that is indulged in other editions (even by the otherwise careful Daughters of St. Paul)." Sister Mary Mark Wickenhiser, editorial director of the Daughters, is very upset with us. She points out that only two documents published by them (*Redemptoris Missio* and *Centesimus Annus*) were slightly edited for inclusive language. "This was done in error and when realized, steps were taken to correct the mistake." She assures us it has not been and will not be done again. We are glad to hear it, and warmly recommend the many excellent materials provided by the Daughters of St. Paul.

■ "There is no peace with Israel and no democracy in Palestine. I don't know why we should stay in this cage." Such are the sentiments of a Christian woman living on the West Bank, sentiments increasingly shared by other Christians in the Holy Land, according to the *Jerusalem Report*, a Jewish publication. There are now 170,000 Christians, mainly Arabs, in the Holy Land, with 130,000 of them within Israel (10,000 in Jerusalem itself) and 40,000 under the rule of the Palestinian Authority. The article details the mounting hostility of Muslims to Christians, while Christians in Israel look back wistfully to the days of former Jerusalem mayor Teddy Kollek. The current Israeli government, it is said, manifests an attitude that ranges from indifference to animus, pressured by hyper-Orthodox Jews who do little to disguise their hatred of the goyim. Bernard Resnikoff, former director of the American Jewish Committee's Israel office and a veteran of programs in Jewish-Christian relations, tells of an Orthodox deputy minister who frankly asked, "Why do we need these goyim here?" The sympathy of many Arab Christians for the Palestinian cause is no doubt both a source and a product of such Jewish hostility. Relations have also worsened with the Holy See. When Prime Minister Netanyahu visited the Pope in February, he had no answer to questions about why Israel had not fulfilled its promises to regularize the legal status of church personnel and property. Some said it was simply incompetence, that he had not been briefed properly, while others in the Vatican suspect bad faith. Exacerbating tensions further is an anti-conversion bill in the Knesset that would prohibit the possession of materials that might be used to evangelize Jews. Assurances have been given that there would probably be an exemption for the possession of a New Testament.

■ Pio Cardinal Laghi is head of the Vatican's congregation for education and was for some years papal nuncio in Argentina during the time of the bloody dictatorship and widespread "disappearances" of those deemed politically dangerous. Rabbi Leon Klenicki of the Anti-Defamation League is also from Argentina. In recent months some in Argentina have

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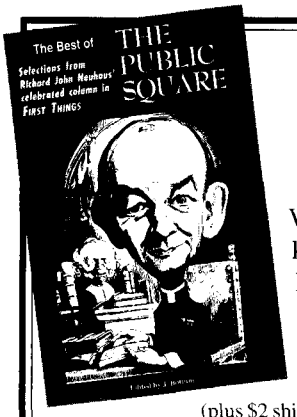
charged Cardinal Laghi with having collaborated with the dictators. The charge has been picked up in the North American media and is echoed also by Catholic dissidents in their campaign against all things associated with Rome. On June 19, Rabbi Klenicki wrote the following to Cardinal Laghi: "I have read with astonishment and pain recent statements by a group of the Plaza de Mayo Mothers concerning your work and testimony during the days of the Junta dictatorship in Argentina. I was shocked by what I read. I know personally of your help to prisoners and their families. I know how much you cooperated with the Anti-Defamation League and local Argentinean organizations in our efforts for human rights and liberation of political prisoners. Your help in the case of Jacobo Timerman made possible his release from jail to home arrest and later on to Israel. I still remember your constant denunciation of torture and discrimination to the community at large and especially to Catholic leaders making known the existence of concentration camps in Argentina. Few listened to you. It is ironic and painful that the officials of those dark days, and torturers, are forgiven and given freedom—and those who defended freedom and human dignity, like yourself, are accused by certain groups. History plays a real cynical twist in present Argentina. I sincerely believe that there still is the need for a national reckoning of the soul, rather than accusing innocent people."

■ *Conversations With God,* books one and two, has turned into a publishing sensation, with spin-offs of tapes, videos, and a veritable industry of promotion. Neale Donald Walsch's nom de mike as a talk-show host was Bob White until God decided to take him into His confidence. God typically wakes him up at 4:20 A.M. and Walsch grabs his yellow legal pad and furiously writes down the words from on high. This is revelation-lite. In response to the age-old problem of theodicy, for instance, God is most reassuring: "In truth, there is nothing evil." "I do not love 'good' more than I love 'bad.'" In addition, God tells us to "stop making value judgments." Asked why he was chosen to receive these massages, Walsch responded: "I think it's just a few who allow themselves to feel worthy of being chosen and therefore experience the fact that they've been chosen. I was inspired to write these things, and now over a million people have said by their purchasing and their thunderous response to these books that they have found value in that material. So I'm deeply grateful and, I have to say, very humbled." When P. T. Barnum estimated one per minute, the American population was much smaller.

■ Remember the list you were going to send us?



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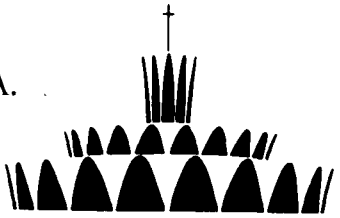

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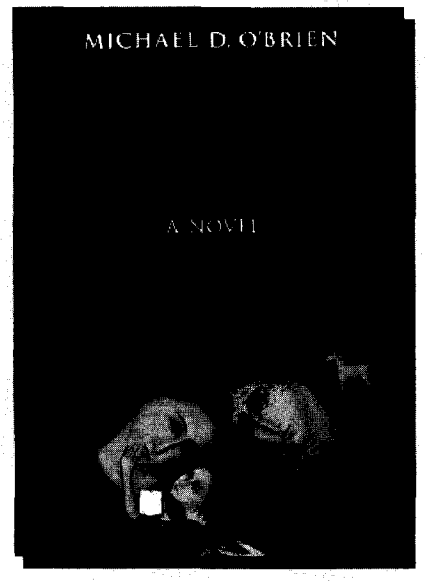

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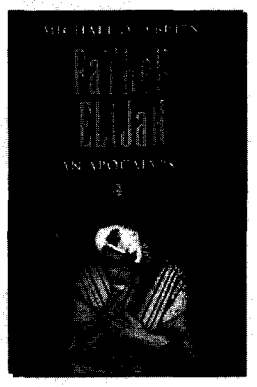

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